NAVAL WAR COLLEGE

International Law Situations

WITH SOLUTIONS AND NOTES

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UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1939

For sale by the Superintendent of Documents, Washington, D. C. - - - - - Price 25 cents

PREFACE

"International Law Situations, with Solutions and Notes, 1937," has been prepared, as formerly, by George Grafton Wilson, LL. D., professor emeritus of international law, Harvard University. It covers topics which have been the subject of discussion by members of the senior and junior classes of 1938. The method followed has been to propound situations for consideration by members of the classes and, after critical discussion, to organize the material for publication.

While the conclusions reached as a result of the discussions are in no way official, the notes afford a convenient survey of material relating to the subject presented, and they should be of value for purposes of reference.

Criticism concerning the contents of this volume and suggestions regarding situations to be given consideration in subsequent volumes will be welcomed by the Naval War College.

C. P. SNYDER,
Rear Admiral, United States Navy,
President, Naval War College.

JUNE 13, 1938.

CONTENTS

Situation I

PROTECTION BY VESSELS OF WAR

States X and Y, non-American states, are at war. State Z, an American state, is an ally of state Y. Other states are neutral.

States B, C, and D are American states parties to the Habana treaties of 1928,[1] the Montevideo treaties of 1933,[2] and the Buenos Aires treaties of 1936,[3] but state Z is not a party to any of the above treaties though carefully observing international law.

States L, M, and N are non-American states and not parties to any of the above treaties.

(*a*) The *Bami,* an innocent merchant vessel in ballast lawfully flying the flag of state B, is passing through a strait which is fifteen miles wide and is between two islands belonging to state Y when it is seized eight miles from land by the *Yosu,* a vessel of war of Y, on the ground that this area is a proclaimed war zone and closed to all ships. The *Bami* requests protection of the *Bosu,* a vessel of war of state B, which proceeds immediately and overtakes the *Bami* and the *Yosu* in the strait seven

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[1] Convention on maritime neutrality. 1935 Naval War College, International Law Situations, p. 115; Convention concerning the rights and duties of states in the event of civil strife. *Ibid,* p. 123.

[2] Additional protocol to the general convention of inter-American conciliation. *Post,* p. 158.

[3] Convention for the maintenance, preservation, and reestablishment of peace. *Post,* p. 160.

Additional protocol relative to non-intervention. *Post,* p. 169.

Convention to coordinate, extend, and assure the fulfillment of the existing treaties between the American States. *Post,* p. 163.

miles from land. What action may the *Bosu* lawfully take?

(*b*) The *Zosu,* a vessel of war of state Z, captures and puts a prize crew on board the *Lami,* a merchant vessel lawfully flying the flag of state L and bound for a port of L, passing through the same strait with a cargo of bananas consigned to a merchant in an inland state bordering on state X. The *Losu,* a vessel of war of state L, later meets the *Lami* five miles from land. What action may the *Losu* lawfully take if asked to protect the *Lami?*

(*c*) State X, not able effectively to blockade any port of Y, proclaims all articles bound for Y to be contraband. State C has not included oranges, though state D has included oranges in the list of prohibited exports. The *Xalu,* a vessel of war of state X, seizes on the ground of carriage of contraband the *Cemi,* a merchant vessel, with a cargo of oranges two-thirds from state C and one-third from state D, lawfully flying the flag of state C and bound for a non-military port of Y. What action may the *Cosa,* a vessel of war of state C, lawfully take when appealed to by the *Cemi?*

(*d*) The *Nami,* a merchant vessel lawfully flying the flag of state N, calls at a port of state D and takes on board passengers, nationals of state D, bound for state X. State D has prohibited the sailing of its nationals in the war area during the hostilities. The *Nami* also has on board passengers, nationals of states L and M bound for state X. The *Zosu* visits the *Nami* 100 miles at sea off state N and is removing the passengers, nationals of states D, L, and M, when the *Losu* approaches and the nationals of L request protection. The nationals of D and M also request protection of the

Dosu, an approaching vessel of war of state D. What action may the *Losu* and *Dosu* lawfully take?

SOLUTION

(*a*) (1) The commander of *Bosu* should raise question with the commander of *Yosu* as to whether the *Bami* has not been illegally seized on high seas and request the release of the *Bami.*

(2) The commander of the *Bosu* should report to the Navy Department his action.

(*b*) (1) As the *Zosu* has placed a prize crew on the *Lami* and is sending the *Lami* in for adjudication, the commander of the *Losu* may take no further action other than to inquire reasons for capture.

(2) The commander of the *Losu* should report the circumstances to Navy Department.

(*c*) As oranges may legally be declared contraband and as the entire cargo of the *Cemi* may be liable to condemnation, the capture of the *Cemi* by the *Xalu* is lawful and the commander of the *Cosa* may take no further action other than to report the facts.

(*d*) (1) The passengers on the *Nami* being under the jurisdiction of state N, no third state may take action in regard to their safe removal in time of war by a vessel of war of state Z. This becomes primarily a matter of concern between states N and Z.

(2) The commanders of the *Losu* and *Dosu* may request reasons for the action of the *Zosu* and report the facts to their Navy Departments for appropriate action. The subsequent treatment of the nationals of D, L, and M may become a matter for action of those states.

Notes

Pan American treaties.—

(*a*) *General survey.*—President Coolidge in opening the Sixth International Conference of American States, Habana, January 16, 1928, reviewing the history of the American states and their methods of "resolving international differences without resort to force," said:

"If these conferences mean anything, they mean the bringing of all our people more definitely and more completely under the reign of law. After all, it is in that direction that we must look with the greatest assurance for human progress. We can make no advance in the realm of economics, we can do nothing for education, we can accomplish but little even in the sphere of religion, until human affairs are brought within the orderly rule of law. The surest refuge of the weak and the oppressed is in the law. It is preeminently the shield of small nations. This is necessarily a long, laborious process, which must broaden out from precedent to precedent, from the general acceptance of principle to principle." (Report of the Delegates of the United States of America, p. 68.)

The aspiration for peace was further voiced in the pronouncement of President Roosevelt, 1933, of a "good neighbor" policy. Secretary Hull at the opening of the Buenos Aires Conference in 1936 had among other objectives enunciated as vitally important for the Western World "a common policy of neutrality" and that "international law should be reestablished, revitalized, and strengthened." On his return, speaking of the work of the Conference, he said:

"This welding of inter-American friendship has now become a powerful, positive force for peace throughout the world." (January 13, 1937.)

The Conventions of 1928, 1933, and 1936 show the trend of American states toward a policy of peace, and were negotiated with view to advancing that policy. Accordingly they should be interpreted in this spirit.

It should be noted that by becoming party to the above convention of 1936, a state commits itself to obligations under five other agreements, 1923–1933, mentioned in Article I.

(*b*) *Inter-American consultation and cooperation.*—The "Convention to coordinate, extend, and assure the fulfillment of the existing treaties between the American states," Buenos Aires, December 23, 1936, affirms the loyalty of American states to the principles of treaties of recent years aiming to assure peace without the use of force. These include the treaties negotiated among American states such as those of Santiago, May 3, 1923; Paris, August 28, 1928; Washington, January 5, 1929; Rio de Janeiro, October 10, 1933.

Article 6 of the Convention of Buenos Aires, December 23, 1936, provides:

"Without prejudice to the universal principles of neutrality provided for in the case of an international war outside of America and without affecting the duties contracted by those American States members of the League of Nations, the High Contracting Parties reaffirm their loyalty to the principles enunciated in the five agreements referred to in Article 1, and they agree that in the case of an outbreak of hostilities or threat of an outbreak of hostilities between two or more of them, they shall, through consultation, immediately endeavor to adopt in their character as neutrals a common and solidary attitude, in order to discourage or prevent the spread or prolongation of hostilities.

"With this object, and having in mind the diversity of cases and circumstances, they may consider the imposition of prohibitions or restrictions on the sale or shipment of

arms, munitions and implements of war, loans or other financial help to the States in conflict, in accordance with the municipal legislation of the High Contracting Parties, and without detriment to their obligations derived from other treaties to which they are or may become parties." Pan American Union. Congress and Conference Series, No. 22, pp. 37, 39; *post* p. 166.)

In this article the American states agree under certain circumstances that "they shall, through consultation, immediately endeavor to adopt in their character as neutrals a common and solidary attitude in order to discourage or prevent the spread or prolongation of hostilities" "without prejudice to the universal principles of neutrality" or "treaties to which they are or may become parties." The American states "in their character as neutrals" propose in their "common and solidary attitude" "the imposition of prohibitions or restrictions on the sale or shipment of arms, munitions, and implements of war, loans or other financial help to the states in conflict, in accordance with the municipal legislation of the High Contracting Parties, and without detriment to their obligations derived from other treaties to which they are or may become parties."

(*c*) *Fulfillment of existing treaties, 1936.*—On July 15, 1937, the President ratified on behalf of the United States the "Convention to coordinate, extend, and assure the fulfillment of the existing treaties between the American states" which was signed at Buenos Aires, December 23, 1936. This is a comprehensive regional agreement by which there is recognized differences in the binding force of certain regional treaties and of universal principles of international law applicable outside the Americas.

In Article 1 of this Convention the agreements to which the "Governments represented at the Inter-American Conference for the Maintenance of Peace" are bound are enumerated:

"Taking into consideration that, by the Treaty to Avoid and Prevent Conflicts between the American States, Signed at Santiago, May 3, 1923,[4] (known as the Gondra Treaty), the High Contracting Parties agree that all controversies which it has been impossible to settle through diplomatic channels or to submit to arbitration in accordance with existing treaties shall be submitted for investigation and report to a Commission of Inquiry:

"That by the Treaty for the Renunciation of War, signed at Paris on August 28, 1928,[5] (known as the Kellogg-Briand Pact, or Pact of Paris), the High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations with one another;

"That by the General Convention of Inter-American Conciliation,[6] signed at Washington, January 5, 1929, the High Contracting Parties agree to submit to the procedure of conciliation all controversies between them, which it may not have been possible to settle through diplomatic channels, and to establish a "Commission of Conciliation" to carry out the obligations assumed in the Convention;

"That by the General Treaty of Inter-American Arbitration,[7] signed at Washington, January 5, 1929, the High Contracting Parties bind themselves to submit to arbitration, subject to certain exceptions, all differences between them of an international character, which it has not been possible to adjust by diplomacy and which are juridical in their nature by reason of being susceptible of decision by the application of the principles of law, and, moreover, to create a procedure of arbitration to be followed; and

[4] *Post*, p. 132.
[5] 1929 Naval War College International Law Situation, p. 104.
[6] 46 Stat. 2209; *post*, p. 146.
[7] 49 Stat. 3153; *post*, p. 138.

"That by the Treaty of Non-Aggression and Conciliation,[8] signed at Rio de Janeiro, October 10, 1933, (known as the Saavedra Lamas Treaty), the High Contracting Parties solemnly declare that they condemn wars of aggression in their mutual relations or in those with other States and that the settlement of disputes or controversies between them shall be effected only by pacific means which have the sanction of international law, and also declare that as between them territorial questions must not be settled by violence, and that they will not recognize any territorial arrangement not obtained by pacific means, nor the validity of the occupation or acquisition of territories brought about by force of arms, and, moreover, in a case of non-compliance with these obligations, the contracting States undertake to adopt, in their character as neutrals, a common and solidary attitude and to exercise the political, juridical or economic means authorized by international law, and to bring the influence of public opinion to bear, without, however, resorting to intervention, either diplomatic or armed, subject nevertheless to the attitude that may be incumbent upon them by virtue of their collective treaties; and, further, undertake to create a procedure of conciliation;

"The High Contracting Parties reaffirm the obligations entered into to settle, by pacific means, controversies of an international character that may arise between them." (Treaty Series, No. 926.)

(*d*) *Pan American solidarity, 1936.*—At the Buenos Aires Conference, 1936, a formal statement of common aspiration was agreed upon by the twenty-one American states. It was stated in the Declaration of Principles of Inter-American Solidarity and Cooperation, that

"The Governments of the American Republics, having considered:

"That they have a common likeness in their democratic form of government, and their common ideals of peace and justice, manifested in the several Treaties and Conventions

[8] 49 Stat. 3363, 3375; *post*, p. 152.

which they have signed for the purpose of constituting a purely American system tending towards the preservation of peace, the proscription of war, the harmonious development of their commerce and of their cultural aspirations demonstrated in all of their political, economic, social, scientific and artistic activities;

"That the existence of continental interests obliges them to maintain solidarity of principles as the basis of life of the relations of each to every other American nation;

"That Pan Americanism, as a principle of American International Law, by which is understood a moral union of all of the American Republics in defense of their common interests based upon the most perfect equality and reciprocal respect for their rights of autonomy, independence and free development, requires the proclamation of principles of American International Law; and

"That it is necessary to consecrate the principle of American solidarity in all non-continental conflicts, especially since those limited to the American Continent should find a peaceful solution by the means established by the Treaties and Conventions now in force or in the instruments hereafter to be executed.

"The Inter-American Conference for the Maintenance of Peace Declares:

"1. That the American Nations, true to their republican institutions, proclaim their absolute juridical liberty, their unrestricted respect for their several sovereignty and the existence of a common democracy throughout America;

"2. That every act susceptible of disturbing the peace of America affects each and every one of them, and justifies the initiation of the procedure of consultation provided for in the Convention for the Maintenance, Preservation and Reestablishment of Peace, executed at this Conference; and

"3. That the following principles are accepted by the international American community;

"(*a*) Proscription of territorial conquest and that, in consequence, no acquisition made through violence shall be recognized;

"(*b*) Intervention by one State in the internal or external affairs of another State is condemned;

"(*c*) Forcible collection of pecuniary debts is illegal; and

"(*d*) Any difference or dispute between American nations, whatever its nature or origin, shall be settled by the methods of conciliation, or full arbitration, or through operation of international justice." (Pan American Union. Congress and Conference Series, No. 22, p. 60.)

Observance of international law.—These conventions of recent years among American states have not merely affirmed the purpose to fulfill existing treaty agreements but in many articles have affirmed the intention to support international law. In general this has been the case in regard to matters to which the conventions do not specifically refer. There would, therefore, be a large field of international law to which the usually accepted principles would apply. This would be the case in most areas of maritime and fluvial jurisdiction, both in peace and in war. The jurisdiction over straits has been a subject for consideration for many years and has not been covered in a special American convention.

In most maritime matters the generally accepted international law would apply among American states without reference to special treaties. Questions as to straits have been discussed from early days of international law to recent times.

Grotius on limits of strait.—After mentioning the acquisition of rights over rivers, Grotius in 1625 says:

"In the light of the example just given it would appear that the sea also can be acquired by him who holds the lands or both sides, even though it may extend above as a bay, or above and below as a strait, provided that the part of the sea in question is not so large that, when compared with the lands on both sides, it does not seem a part of them." (De Jure Belli ac Pacis [Carnegie Classic], Bk. II, chap. III, viii.)

From the days of Grotius and Bynkershoek, attempts have been made by many writers to make more definite the limits and nature of jurisdictional rights of adjacent states over narrow seas and straits. For this purpose conventions have often been concluded even in recent times.

"Straits" convention, Montreux, July 20, 1936.— The straits which for many years have received the most constant attention are the waters connecting the Aegean and Black Seas. These waters include "the Straits of the Dardanelles, the Sea of Marmora, and the Bosphorus comprised under the general term 'Straits'." The use of these waters had been regulated by many agreements particularly since the Treaty of Adrianople, 1829. The Convention of Lausanne of July 24, 1923, had regulated the use of the "Straits," but the Convention of Montreux, July 20, 1936, replaced the provisions of the Convention of Lausanne. The expression "not being a belligerent" replaces the word "neutral."

Article 5 of the Montreux convention provides that:

"In time of war, Turkey being belligerent, merchant vessels not belonging to a country at war with Turkey shall enjoy freedom of transit and navigation in the Straits on condition that they do not in any way assist the enemy.

"Such vessels shall enter the Straits by day and their transit shall be effected by the route which shall in each case be indicated by the Turkish authorities." (173 League of Nations Treaty Series, p. 213; 31 American Journal of International Law, Supplement, p. 4.)

Article 20 further provides that:

"In time of war, Turkey being belligerent, the provisions of Articles 10 to 18 shall not be applicable; the passage of warships shall be left entirely to the discretion of the Turkish Government." (*Ibid*, p. 8.)

It is presumed in Article 21 that Turkey, when threatened with war, will make reasonable provision for the passage of vessels of war which do not belong to the threatening state.

Regulations restricting passage of non-belligerent merchant vessels to certain routes and to entrance by day in such narrow waters as the "Straits" seem, however, to be reasonable.

This Article 5, above, is a material modification of the Convention of Lausanne, July 24, 1923, which is as follows:

ARTICLE 2, Annex 1 (*c*). "*In time of war, Turkey being a belligerent.*

"Freedom of navigation for neutral vessels and neutral non-military aircraft, if the vessel or aircraft in question does not assist the enemy, particularly by carrying contraband, troops or enemy nationals. Turkey will have the right to visit and search such vessels and aircraft, and for this purpose aircraft are to alight on the ground or on the sea in such areas as are specified and prepared for this purpose by Turkey. The rights of Turkey to apply to enemy vessels the measures allowed by international law are not affected.

"Turkey will have full power to take such measures as she may consider necessary to prevent enemy vessels from using the Straits. These measures, however, are not to be of such a nature as to prevent the free passage of neutral vessels, and Turkey agrees to provide such vessels with either the necessary instructions or pilots for the above purpose." (28 League of Nations Treaty Series, p. 115; 18 A. J. I. L. [1924], Supplement, p. 55.)

Article 20 of the Montreux Convention above gives to Turkey much greater control of the passage of the "Straits" than was provided under the Convention of Lausanne:

ARTICLE 2, Annex 2 (*c*). "*In time of war, Turkey being belligerent.*

"Complete freedom of passage for neutral warships, without any formalities, or tax, or charge whatever, but under the same limitations as in paragraph 2 (*a*).

"The measures taken by Turkey to prevent enemy ships and aircraft from using the Straits are not to be of such a nature as to prevent the free passage of neutral ships and aircraft, and Turkey agrees to provide the said ships and aircraft with either the necessary instructions or pilots for the above purpose.

"Neutral military aircraft will make the passage of the Straits at their own risk and peril, and will submit to investigation as to their character. For this purpose aircraft are to alight on the ground or on the sea in such areas as are specified and prepared for this purpose by Turkey."

It is evident that even in regard to the Bosphorus and Dardanelles, long subject to international regulation, a final adjustment may not have been reached. Other areas have often been placed under special restriction, but not always without protest by other states.

Defensive sea areas, United States.—An act, March 4, 1917, provided that whoever shall—

"willfully, or wantonly violate any duly authorized and promulgated order or regulation of the President governing persons or vessels within the limits of defensive sea areas, which defensive sea areas are hereby authorized to be established by order of the President from time to time as may be necessary in his discretion for purposes of national defense, shall be punished, on conviction thereof in a district or circuit court of appeals of the United States for the district or circuit in which the offense was committed, or into which the offender is first brought, by a fine of not more than $5,000, or by imprisonment for a term not exceeding five years, or by both, in the discretion of the court." (39 Stat. 1194; 1918 Naval War College, International Law Documents, p. 162.)

This act applied in time of peace provided for penalty to be determined by the district or circuit court. Defensive sea areas were established under

this act before the United States became a belligerent as in the case of Chesapeake Bay, Hampton Roads, and more than twenty-five other areas on April 5, 1917. Entrance to these areas was prohibited except as prescribed in conditions as to place, route, speed, conduct, etc. Failure to observe these regulations subjected the offender to the use of necessary force as well as prosecution.

The exercise of control over defensive sea areas or other similar areas may give rise to controversy or to questions of conflict of authority in such areas.

Navy regulations, United States.—As a general principle a state is under obligation to protect the lives and property of its citizens when in danger and merchant vessels lawfully employed. In some exceptional cases the United States had in early treaties agreed to protect the lives and property of citizens of other states. The general obligation as to injury or threatened injury to citizens or property is stated in the United States Navy Regulations as follows:

"722. On occasions where injury to the United States or to citizens thereof is committed or threatened, in violation of the principles of international law or treaty rights, the commander in chief shall consult with the diplomatic representative or consul of the United States, and take such steps as the gravity of the case demand, reporting immediately to the Secretary of the Navy all the facts. The responsibility for any action taken by a naval force, however, rests wholly upon the commanding officer thereof.

"723. The use of force against a foreign and friendly state, or against anyone within the territories thereof, is illegal.

"The right of self-preservation, however, is a right which belongs to States as well as to individuals, and in the case of States it includes the protection of the State, its honor, and

its possessions, and the lives and property of its citizens against arbitrary violence, actual or impending, whereby the State or its citizens may suffer irreparable injury. The conditions calling for the application of the right of self-preservation can not be defined beforehand, but must be left to the sound judgment of responsible officers, who are to perform their duties in this respect with all possible care and forbearance. In no case shall force be exercised in time of peace otherwise than as an application of the right of self-preservation as above defined. It must be used only as a last resort, and then only to the extent which is absolutely necessary to accomplish the end required. It can never be exercised with a view to inflicting punishment for acts already committed."

Under these provisions action by naval forces is to a high degree limited. Except in time of war in which the United States is a belligerent, there would rarely arise a condition of arbitrary violence, actual or impending, "whereby the State or its citizens may suffer irreparable injury."

These regulations of the United States are in accord with generally accepted practice and seem essential for the protection of recognized fundamental rights of state existence.

Restrictions on travel.—Under the Act of May 1, 1937,[9] amending prior legislation the earlier provisions on "travel on vessels of belligerent states" were repeated. This Act if applied in Situation I made it possible for the President of the United States to "find that there exists a state of war between, or among, two or more foreign states" and to "proclaim such fact."

Section 9 of the Act of May 1, 1937, states that—

"Whenever the President shall have issued a proclamation under the authority of section 1 of this Act it shall there-

[9] *Post*, pp. 171, 181.

after be unlawful for any citizen of the United States to travel on any vessel of the state or states named in such proclamation, except in accordance with such rules and regulations as the President shall prescribe: *Provided, however*, "That the provisions of this section shall not apply to a citizen of the United States traveling on a vessel whose voyage was begun in advance of the date of the President's proclamation, and who had no opportunity to discontinue his voyage after that date: *And provided further*, That they shall not apply under ninety days after the date of the President's proclamation to a citizen of the United States returning from a foreign state to the United States. Whenever, in the President's judgment, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke his proclamation and the provisions of this section shall thereupon cease to apply with respect to the state or states named in such proclamation, except with respect to offenses committed prior to such revocation." (50 Stat. 121, 127.)

This act shows the attitude of the United States toward travel upon vessels of certain states in time of a Presidentially proclaimed war. The act, however, applies merely to the "vessel of the state or states named in such proclamation" and would place no limitation upon travel on vessels of other states not parties in the conflict. The penalty for violation of this law is under the domestic law of the United States as prescribed in Section 12 and not under international law.

A state may prohibit its citizens from traveling in a specified manner and penalize them in case of violation of the prohibition, but such a law does not confer upon a foreign state any authority to interfere with such transit. In vessels under a foreign flag, the authority of the flag prevails, and in case of interference with this authority in violation of right, recourse rests in the state concerned.

Neutrality.—The concept of neutrality has slowly developed. The support that the idea of neutrality has received has varied and at times has been determined by policy of the states concerned. In ancient times it was usually held that in time of war, when a state was near enough to a combatant to feel the effects of the war, that state would be on one or the other side in the struggle. As belligerents resorted to maritime warfare contacts with non-belligerents became common and the risk of unduly offending a non-belligerent became a matter of serious significance, while the risk which the non-belligerent might run in offending the belligerent might be immediately apparent. Maritime commerce in war time introduced matters of policy often influencing both belligerents to avoid irritating a state having large resources or easily able to make powerful alliances.

Some of the concepts of war became more clearly defined under Gentilis (1552–1608) and Grotius (1583–1645). Bynkershoek (1673–1743) in writing upon war had a chapter on "How War Affects Neutrals." (Quaestionum Juris Publici, Lib. I, c. ix.) At the beginning of this chapter he says "*Non hostes* appelo, qui neutrarum, partium sunt, nec ex foedere his illisve quicquam debent; si quid debeant, Foederati sunt, non simpliciter amici," which may be read, "I call those neutrals who are of neither party, and do not by treaty owe anything to the one or the other; if they owe anything they are allied, not simply friends." The word neutrality had been used hundreds of years before the eighteenth century and references in treaties and elsewhere to the law of neutrality had been frequent. Bynkershoek in 1737, however, contributed

much toward clarifying the concepts of neutrality, contraband, free ships, free goods, etc. Of course, states having a large export trade were averse to interference with commerce, and such a state, if neutral, would be in a position to be of service to one or both belligerents as a source of supply. The law of maritime neutrality was also developing concurrently with the law applied in admiralty and prize courts, some early evidences of which were seen in the fourteenth century. The printed reports of the decision of Lord Stowell from the end of the eighteenth century gave great impetus to the study of and respect for prize law.

The gradual substitution of a professional navy for the irregular methods of maritime warfare introduced direct responsible state control and made the demand for observance of law more tenable.

Common attitude.—Identical provisions are included in many bilateral treaties relating to war and neutrality, particularly since the early eighteenth century. The provisions in regard to visit and search, etc., of the first treaty of the United States with France, February 6, 1776, were repeated in many later treaties, indicating a common attitude upon this subject. Other subjects have been similarly treated. This does not imply, however, that such bilateral treaties become generally binding but only that each state is bound to act in the manner agreed upon in its relations to the other party to the specific treaty.

The fact that identic provisions were common to many bilateral treaties tended to give such provisions the weight of law in international courts. The many identic lists of contraband during the nineteenth century gave support to the idea cur-

rent at the Hague Peace Conferences that a multilateral agreement could be reached upon the articles to be included in the category of contraband. The attempt to obtain general assent to a list as enumerated in the Declaration of London, 1909, was not successful in the early days of the World War.

Attempts were, however, made to agree upon common courses or principles of action upon topics or in regions more or less extended, as in the Hague Peace Conventions of 1899 and 1907, and in the rules of neutrality of Denmark, Norway, and Sweden in 1912.

American solidarity, 1914.—During the World War, while the United States was neutral, there were many proposals looking to agreements by American states upon common action to protect neutral rights or to extend neutral protection. Propositions for the defining of areas about American coasts from which belligerent vessels of war should be excluded or within which they could exercise no rights as regards neutral commerce were common. In a lengthy memorandum from the Peruvian Minister of Foreign Affairs to the Department of State, November 10, 1914, the problems are set forth. The concluding part is as follows:

"In the present European war, which has unfortunately already been extended to Asia, it is not admissible that America, and especially South America, should also become a battlefield. The American countries are not bound up with the European nations either politically or by reason of their interests. The hospitality which they systematically accord to everything from abroad which may contribute to their advancement and development can not be extended to the point of permitting the coasts of the American Continent

to be used for the maintenance of a permanent system of persecution of merchant vessels and for an intermittent and sterile struggle which benefits no one and injures all.

"For this reason the Peruvian Government believes that the time has come for making felt the joint action of all the American Republics to guarantee the inviolability of their trade routes by freeing them throughout their extent from the effects of the hostilities of the belligerent naval forces. An agreement to this effect, asserting that America will not permit its commerce within the maritime areas corresponding to the continent (which area may be considered marked by a line equidistant from the other continents on both the Pacific and the Atlantic sides) to be subject to the contingencies of the present European war, would afford a sufficient guarantee to mitigate at least in part the consequences of the crisis which has already begun to be felt very acutely, and it would enforce respect for the interests affected, such respect not seeming thus far to have entered the minds of the belligerent powers.

"It is permissible to suppose that such an attitude would not be regarded unfavorably by these powers themselves, since it would benefit them likewise, by virtue of the guarantees which would be granted to their merchant vessels, besides relieving them of the obligation of detaching squadrons at such a distance to protect the vessels of their nationality or to pursue those under the enemy's flag." (Foreign Relations, U. S., 1914, Supplement, p. 443.)

Other American states made somewhat similar propositions and on December 8, 1914, the Governing Board of the Pan American Union passed a resolution in which it declared:

"1. That the magnitude of the present European war presents new problems of international law, the solution of which is of equal interest to the entire world.

"2. That [in] the form in which the operations of the belligerents are developing they redound to the injury of the neutrals.

"3. That the principal cause for this result is that the respective rights of the belligerents and of the neutrals are

not clearly defined, notwithstanding that such definition is demanded both by general convenience as by the spirit of justice which doubtless animates the belligerents with respect to the interests of the neutrals.

"4. That considerations of every character call for a definition of such rights as promptly as possible upon the principle that liberty of commerce should not be restricted beyond the point indispensable for military operations.

"On these grounds the Governing Board of the Pan American Union resolves:

"1. A special commission of the same is hereby appointed, to consist of nine members, of which the Secretary of State of the United States shall form part, acting as chairman thereof, *ex officio*.

"2. This commission shall study the problems presented by the present European war and shall submit to the Governing Board the suggestions it may deem of common interest. In the study of questions of a technical character, this commission will consult the board of jurists. Each government may submit to the committee such plans or suggested resolutions as may be deemed convenient, on the different subjects that circumstances suggest." (*Ibid*, p. 444.)

Venezuela proposed a congress of neutrals to define "neutral rights and duties in the light of the new conditions introduced by modern war", and that revised rules should be "embodied in international law" as a "pledge of peace for the future." To this end Venezuela also proposed a league of neutrals to bring a neutral code into operation.

Proposals for the neutralization of American waters were made by many states. The Scandinavian states had at Malmö on December 20, 1914, assumed an obligation to confer in case of difficulties in maintaining neutral rights, and intimated in late 1914 that the cooperation of the United States would be viewed with satisfaction. Italy

also showed a desire that its action should be "along parallel lines with that of the United States."

Regional understandings.—The Covenant of the League of Nations, for which President Wilson was a main protagonist, recognized in article 21 the desirability of maintaining "regional understandings like the Monroe doctrine." This doctrine was not an international agreement, but a unilateral pronouncement of one powerful state in regard to its policy in a specified area. Other regional understandings have been proposed for specified areas, as the "open door in China," etc., which have later been embodied in international agreements as were the understanding in regard to China in the "Nine Power Treaty" of the Washington Conference, 1922, which provided for "full and frank communication between the Contracting Powers concerned" when the carrying out of the stipulations of the treaty seemed to be involved.

The events since 1922 have seemed to warrant the "full and frank communication," but this has not taken place in any effective manner.

American solidarity, 1917.—The attempts to bring about a common attitude on neutrality prior to 1917 had met with only moderate approval. After the United States entered the war there was some support for a conference of neutral American states, but soon this support became so limited that the proposed meeting was given up and a sentiment in favor of the Peruvian proposition for a "conference doctrine of solidarity with the United States" became general. American states soon broke off relations with Germany, and Brazil declared war on October 26, 1917. Other states gave special privileges. Costa Rica, El Salvador, and

some other states placed their ports at the disposal of the United States.

For many years regional agreements have been common and in one sense any treaty may have a regional significance. Many early treaties applied to limited areas. Such treaties as those relating to the balance of power or concert of powers were usually regional in application. It could scarcely be expected that states having a common type of civilization and interest would not unite for common ends. Alliances of varying nature were the characteristic of a long period of European diplomacy. As competition among states increased, offensive and defensive alliances followed. These were sometimes openly entered into and sometimes secret. It was hoped that at the end of the World War there would be a change in attitude of states and that the world should be made safe "as against force and selfish aggression." President Wilson in his address to Congress, January 8, 1918, proposed as the first of his fourteen points in a "programme of the world's peace":

"I. Open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always frankly and in the public view." (Foreign Relations, U. S., 1918, Sup. 1, I, 15.)

In this address President Wilson also said:

"For such arrangements and covenants we are willing to fight and to continue to fight until they are achieved; but only because we wish the right to prevail and desire a just and stable peace such as can be secured only by removing the chief provocations to war, which this programme does remove." (*Ibid.*, p. 16.)

As to how far the Treaty of Versailles embodied the "fourteen points" and achieved the aims of his programme is a matter of difference of opinion.

Pan American treaties, 1823–1936.—To some degree there has been a feeling of solidarity among the states of the American continent since the early nineteenth century. The Congress of Panama called under the influence of Bolivar in 1826 contemplated a type of league of states. The idea was kept before American states by other American conferences as at Lima (1847), at Santiago (1856), and at Lima (1864). At the conference of 1864 a somewhat elaborate scheme for a league was presented. The Monroe Doctrine of the United States, from 1823, gave a sense of security to states in advocating a united policy. Even in the Congress of Panama, 1826, some of the later principles of conciliation and arbitration were advocated. The movement for strengthening common bonds by the creation of a Pan American Union developed rapidly from 1889 and meetings of representatives of the American states became frequent. Each conference made contributions by discussing advanced projects for international peace and cooperation. The tentative idea of a Pan American Union dating from 1889 was further elaborated at the Fourth Conference at Buenos Aires in 1910.

The Sixth International Conference of American States, Habana, 1928, was considered of such importance that the President of the United States visited Habana and made an address at the opening session emphasizing the need of "continental responsibility" and "international cooperation." Delegations from each of the American republics

were in attendance at this Habana Conference, thus making its acts of significance for all the American states. The scope of the Conference involved the signing of eleven conventions, sixty-two resolutions, seven motions and four agreements.

Subsequent conferences at Montevideo and Buenos Aires elaborated the work of the Habana Conference, and introduced new topics upon which action has been taken.

As many of the conventions signed at these conferences have subsequently been ratified, there is a considerable body of law common to the American states, relating to the time of peace, war, and neutrality. These conventions, binding upon American states, are not always in exact accord with the accepted international obligations as understood among non-American states.

The Conference at Buenos Aires, 1936, was specifically called the Inter-American Conference for the Maintenance of Peace and had as a background the recent war between Bolivia and Paraguay.

Habana Convention, 1928.—Of the ten conventions signed at the Sixth International American Conference, Habana, January 16–February 20, 1928, the Convention on Maritime Neutrality (1935 Naval War College, International Law Situations, p. 115) contains provisions applicable in such a war as that between X and Y. Many of these are similar to those of Hague Convention XIII, 1907, on Neutral Rights and Duties in Maritime War. The preamble of the Habana Convention on Maritime Neutrality implies that there will be to some

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degree concerted action by the Governments of the Republics represented, which—

"Desiring that, in case war breaks out between two or more states the other states may, in the service of peace, offer their good offices or mediation to bring the conflict to an end, without such an action being considered as an unfriendly act;

"Convinced that, in case this aim cannot be attained, neutral states have equal interest in having their rights respected by the belligerents;

"Considering that neutrality is the juridical situation of states which do not take part in the hostilities, and that it creates rights and imposes obligations of impartiality, which should be regulated;

"Recognizing that international solidarity requires that the liberty of commerce should be always respected, avoiding as far as possible unnecessary burdens for the neutrals;

"It being convenient, that as long as this object is not reached, to reduce those burdens as much as possible; and

"In the hope that it will be possible to regulate the matter so that all interests concerned may have every desired guaranty;

"Have resolved to formulate a convention to that effect and have appointed the following plenipotentiaries:" (*Ibid.*)

Limitation on Habana Convention, 1928.—The title of the Habana Convention on Maritime Neutrality, 1928, implied that the Convention applies to a definite status. This status is set forth in the preamble in the words, "neutrality is the juridical situation of states which do not take part in hostilities, and * * * it creates rights and imposes obligations of impartiality, which should be regulated." The Convention is divided into four sections: "Section I. Freedom of commerce in time of war; Section II. Duties and rights of belligerents; Section III. Rights and duties of neutrals; Section IV. Fulfilment and observance of laws

of neutrality." The text of this Convention refers to previous laws and accepted rules and follows some of the rules of the earlier Hague conventions. Indeed, Article 28 specifically states that—

"The present convention does not affect obligations previously undertaken by the contracting parties through international agreements."

In signing this Convention, the delegations of the United States and of Cuba made reservation on the treatment of armed merchantmen, and Chile on the transit of arms, munitions, etc., to a "Mediterranean country."

It was clearly shown that the Habana Conference of 1928 appreciated the difference between war and civil strife, as a later convention was concluded on the "Rights and Duties of States in the Event of Civil Strife." At this time there was therefore a definite concept of neutrality in the sense of international law.

Treaties of 1933.—Among the treaties of the Seventh International Conference of American States at Montevideo, 1933, was one on "The Rights and Duties of States," which again affirms that "the present convention shall not affect obligations previously entered into by the high contracting parties by virtue of international agreements." (Article 12.) This provision reaffirms many conventional agreements upon neutrality.

The Anti-War Treaty on Non-Aggression and Conciliation[9] signed at Rio de Janeiro, October 10, 1933, aimed to end wars of aggression and for territorial acquisition. This treaty refers to war and neutrality.

[9] *Post*, p. 152.

Conventions, Buenos Aires, 1936.—The Convention for the Maintenance, Preservation, and Reestablishment of Peace,[10] December 23, 1936, Article II, refers to "the event of war or a virtual state of war between American states" and also refers to "the standards of international morality." An additional protocol declares "inadmissible the intervention of any one of them, directly or indirectly, and for whatever reason, in the internal or external affairs of any other of the parties," but "mutual consultation" may follow with view to conciliation, arbitration, or judicial settlement.

Passengers bound for belligerent ports.—The treatment of persons having a belligerent destination has long been an important question. Provisions in regard to such persons appeared in treaties in the seventeenth and eighteenth century. The *Trent* case, November 8, 1861, when an American vessel of war required the surrender of Mason and Slidell by the British mail steamer, emphasized the need of definite rules. It was maintained that the persons should not be removed, but the vessel, in case of probable carriage of enemy military persons, should be brought into port.

The consideration of the matter of carriage of enemy persons led to the formulation of Article 47 of the unratified Declaration of London in 1909:

> "Any individual embodied in the armed force of the enemy, and who is found on board a neutral merchant vessel, may be made a prisoner of war, even though there be no ground for the capture of the vessel." (1909 Naval War College, International Law Topics, p. 111.)

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[10] *Post,* p. 160.

The comment on this article explains the point of view in 1909:

"Individuals embodied in the armed military or naval forces of a belligerent may be on board a neutral merchant vessel which is visited and searched. If the vessel is subject to condemnation, the cruiser will capture her and take her to one of her own ports with the persons on board. Clearly the soldiers or sailors of the enemy State will not be set free, but will be considered as prisoners of war. It may happen that the case will not be one for the capture of the ship—for instance, because the master does not know the status of an individual who had the appearance of an ordinary passenger. Must the soldier or soldiers on board the vessel be set free? That does not appear admissible. The belligerent cruiser cannot be compelled to set free active enemies who are physically in her power and are more dangerous than this or that contraband article; naturally she must act with great discretion, and it is at her own responsibility that she requires the surrender of these individuals, but the right to do so is hers; it has thus been thought necessary to explain the point." (*Ibid.*)

In Article 45 of the Declaration of London, there is reference to "the transport of individual passengers who are embodied in the armed force of the enemy" or "persons who with the knowledge of the owner" during the voyage, lend direct assistance to the operations of the enemy."

There is no doubt as to the liability of the vessel to be seized on the ground of unneutral service in case of such transport, but the removal of such persons from the neutral vessel had usually been opposed till the twentieth century. The interference with neutral shipping involved in bringing in a large neutral passenger liner, because a single soldier of an enemy was on board, came to be regarded as unnecessary and it was conceded that the passenger might be turned over to the visiting

vessel of war. The liability would be assumed by the belligerent. Some states have taken positions involving an approval of action which still would be regarded as extreme, as in the Italian regulations of 1927, which provide:

"Persons belonging to or intending to join the enemy's armed forces found on board a neutral vessel may be made prisoners of war, even though the ship be not subject to capture." (Norme de Diritto Marittimo di Guerra, Roma, 1927. Article 78.)

The Instructions for the Navy of the United States, June 1917, stated that the persons "must be actually embodied in the military service of the enemy. Reservists or other persons subject to military duty but not formally incorporated in military service are not included."

The status and treatment of enemy persons on neutral vessels received somewhat full treatment at the Naval War College in 1928 (1928 Naval War College, International Law Situations, pp. 73–108). The discussion in 1928 led to the statement that, "while neutrals may after arriving in a belligerent state, enroll in the military service, this does not subject them to interference prior to entering enemy service." It was also concluded that—

"the present rules in regard to capture do not confer a right to remove from a neutral merchant vessel, when on a regular voyage, passengers of enemy nationality on the ground that from their age or capacity they may be called for military service."

There would not be a general obligation resting upon all neutral vessels of war to interfere in cases in which neutral vessels lawfully flying other flags than that of the vessel of war might be concerned.

Habana Convention, 1928, on transit.—The passage of goods across American states is as among the parties to the Habana 1928 Convention on Maritime Neutrality regulated by Article 22, which specifically refers to inland states:

"Neutral states are not obligated to prevent the export or transit at the expense of any one of the belligerents of arms, munitions and in general of anything which may be useful to their military forces.

"Transit shall be permitted when, in the event of a war between two American nations, one of the belligerents is a mediterranean country, having no other means of supplying itself, provided the vital interests of the country through which transit is requested do not suffer by the granting thereof." (1935 Naval War College, International Law Situations, p. 120.)

In the first paragraph the neutral state is "not obligated to prevent the export or transit." In the second paragraph, "transit shall be permitted."

Cargoes contraband.—In December 1915 certain boxes of Valentia oranges were seized on Norwegian steamships, *Norne, Grove,* and *Hardanger,* on a voyage from Valentia, Spain, to Rotterdam, Holland. The fruit was to be sold at auction in Rotterdam. The Judicial Committee of the Privy Council on appeal from the British Prize Court stated:

"At the date of the seizure the oranges had been declared conditional contraband. * * * Whether goods in any particular instance are contraband, by application of the doctrine of continuous voyage, is a question of fact. Under the terms of the Order in Council the appellants must discharge the burden of proving that the destination, if the voyage had not been interrupted, would have been innocent. When an exporter ships goods under such conditions that he does not retain control of their disposal after arrival at the port of delivery, and the control but for their interception and seizure would have passed into the hands of some other persons,

who had the intention either to sell them to an enemy government or to send them to an enemy base of supply, then the doctrine of continuous voyage becomes applicable, and the goods on capture are liable to condemnation as contraband. The case for the respondent is that the cases of oranges on arrival at Rotterdam would have passed under the control of Lutten and Sohn, of Hamburg." (1 A. C. [1921] 765.)

The decision of the Prize Court condemning the oranges as conditional contraband destined for an enemy base was affirmed. Whether all the opinion would have been affirmed had it not been for the domestic Orders-in-Council is open to question, but oranges bound for an enemy base of supply would be conditional contraband. Similar decisions were given as to conditional contraband in the German Court (*Medea*, 1 Entscheidungen des Oberprisengerichts 131) and in the French court (*Athènes*, Fauchille, Jurisprudence Francaise en Matière de Prises, p. 428).

The Hakan.—The Hakan, a Swedish merchant vessel, was captured by a British vessel of war April 4, 1916, with a cargo of salted herrings. The *Hakan* was bound to Lubeck in Germany. The British Prize court condemned the ship and cargo. The Judicial Committee of the Privy Council heard the case on appeal.

"In their lordships' opinion, goods which are conditional contraband can be properly condemned whenever the court is of opinion, under all the circumstances brought to its knowledge, that they were probably intended to be applied for warlike purposes, the *Jong Margaretha.* * * *

"In the present case Lubeck, the port of destination of the goods, is undoubtedly a port used largely for the importation into Germany of goods from Norway and Sweden; but it does not appear whether it is used exclusively or at all as a base of naval or military equipment. On the other hand,

it is quite certain that the persons to whom the goods were consigned at Lubeck were bound forthwith to hand them over to the Central Purchasing Co., of Berlin, a company appointed by the German Government to act under the direction of the imperial chancellor for purposes connected with the control of the food supplies rendered necessary by the war. The proper inference seems to be that the goods in question are in effect goods requisitioned by the Government for the purposes of the war. It may be quite true that their ultimate application, had they escaped capture, would have been to feed civilians, and not the naval or military forces of Germany; but the general scarcity of food in Germany had made the victualing of the civil population a war problem. Even if the military or naval forces of Germany are never supplied with salted herrings, their rations of bread or meat may well be increased by reason of the possibility of supplying salted herrings to the civil population. Under these circumstances, the inference is almost irresistible that the goods were intended to be applied for warlike purposes, and, this being so, their lordships are of opinion that the goods were rightly condemned." ([1918] A. C. 148; 1922 Naval War College, International Law Decisions, p. 164.)

There is here introduced the idea of contraband by substitution, which has often been advanced in recent wars.

The ship itself was also condemned on the ground that authorities held that "knowledge of the character of the goods on the part of the owner of the ship is sufficient to justify condemnation of the ship—at any rate, where the goods in question constitute a substantial part of the cargo." (*Ibid.*)

Reservations on contraband, 1936.—In signing the Buenos Aires, 1936, Convention to coordinate, extend, and assure the fulfillment of the existing treaties between American states, the Argentine delegation made the following reservation:

"In no case, under Article VI, can foodstuffs or raw materials destined for the civil populations of belligerent coun-

tries be considered as contraband of war, nor shall there exist any duty to prohibit credits for the acquisition of said foodstuffs or raw materials which have the destination indicated.

"With reference to the embargo on arms, each Nation may reserve freedom of action in the face of a war of aggression." (Pan American Union, Congress and Conference Series, No. 22, p. 40; *post* p. 168.)

Paraguay made a like reservation. (*Ibid.*)

Restriction of joint resolution of United States on export of arms, etc.—The joint resolution providing for the prohibition of the export of arms, ammunition, and implements of war to belligerents, etc., adopted by the Congress of the United States, May 1, 1937, contained in section 4a a restriction on its application. This section is as follows:

"SEC. 4. This Act shall not apply to an American republic or republics engaged in war against a non-American state or states, provided the American republic is not cooperating with a non-American state or states in such war."

It is not the intent of the Government of the United States to apply the provisions of this joint resolution in wars in which an American republic or republics may be engaged against a non-American state or states, provided the American state is not "cooperating" on the non-American side. The joint resolution would not specially apply when the war is one wholly between non-American states even though an American republic should become an ally of one of the parties.

Prior treaties.—The recent multipartite treaties among American states have usually contained or implied a stipulation to the following effect:

"The present convention does not affect obligations previously undertaken by the contracting parties through international agreements."

This form appears in the conventions of 1928, 1933, and 1936. Some articles make specific reference to obligations of American states as members of the League of Nations. Modification of obligations previously existing may in any given instance be very limited as the provisions of a prior treaty would prevail and the later treaty would merely impose additional obligations as among the ratifying parties.

Résumé.—A belligerent state has in general the right to regulate the use of its territorial waters. The right of innocent passage may be claimed by neutral merchant vessels. There may be and often is in time of war difference of opinion as to what is meant by the term "innocent passage."

In straits which are the sole waterway between high seas, if proclaimed war zones, defense areas or similarly designated, the right of innocent passage may not be prohibited even though such passage necessarily involves entering territorial waters.

If a territorial strait, proclaimed a war zone, is not the sole waterway between two seas though it is the more convenient and customary route, the passage of the strait may be restricted by reasonable military regulations, and passage may even be prohibited.

Cases involving differences of opinion between commanders of naval vessels of belligerents and neutrals in regard to neutral rights of merchant vessels do not usually demand the immediate resort to force on the part of the neutral. If any injury to the neutral merchant vessel is not remedied by the belligerent courts, diplomatic means are available. In such cases, however, the facts so

far as ascertainable should be reported to the proper authorities and if neutral rights are clearly violated, formal protest may be made or if in doubt reasons for the action may be requested.

An innocent merchant vessel in ballast within a war zone, but outside territorial waters would not ordinarily be liable to seizure solely on the ground of its presence there but the presumption would be that its seizure would not be justified.

If a neutral merchant vessel with cargo has been seized and if the belligerent has placed a prize crew on board, from that time a merchant vessel is under the military control of the belligerent state and any protest in regard to further action should be by the political authorities of the neutral state concerned, unless the naval commander has special instructions. This is particularly true, as in recent years the list of articles liable as contraband has varied, the effect of ultimate destination in determining the treatment of goods has not been uniform, and treaty provisions and national legislation have introduced exceptional practices.

In recent wars belligerents have usually extended the list of contraband as the maintenance of blockade has become increasingly difficult. During the World War the rule of the unratified Declaration of London in regard to the proportion of contraband in the cargo rendering the vessel liable as well as the cargo was usually followed in the prize courts.

Recently when states have without declaring war resorted to the use of force against each other, some states have prohibited the export of certain articles to the states engaged in the conflict. That a state engaged in a declared war should consider

such prohibited exports properly within the category of contraband when bound to an enemy would seem reasonable even from the point of view of the neutrals concerned.

Certain states have made it unlawful for their nationals to travel on vessels of states engaged in hostilities. A state may also lawfully forbid its nationals to travel within the war area during hostilities or may notify them that such travel is at their own risk. The nationals of any state, when traveling on a vessel on the high seas, are under the jurisdiction of the state whose flag the vessel lawfully flies. In treatment of neutral nationals on the high seas, belligerents are under obligations to have due regard for their safety and not to place them under restraint unless they are engaged in aiding the enemy or embodied in the service of the enemy.

SOLUTION

(*a*) (1) The commander of the *Bosu* should raise question with the commander of the *Yosu* as to whether the *Bami* has not been illegally seized on high seas and request the release of the *Bami*.

(2) The commander of the *Bosu* should report to the Navy Department his action.

(*b*) (1) As the *Zosu* has placed a prize crew on the *Lami* and is sending the *Lami* in for adjudication, the commander of the *Losu* may take no further action other than to inquire reasons for capture.

(2) The commander of the *Losu* should report the circumstances to Navy Department.

(*c*) As oranges may legally be declared contraband and as the entire cargo of the *Cemi* may be

liable to condemnation, the capture of the *Cemi* by the *Xalu* is lawful, and the commander of the *Cosa* may take no further action other than to report the facts.

(*d*) (1) The passengers on the *Nami* being under the jurisdiction of state N, no third state may take action in regard to their safe removal in time of war by a vessel of war of state Z. This becomes primarily a matter of concern between states N and Z.

(2) The commanders of the *Losu* and of the *Dosu* may request reasons for the action of the *Zosu* and report the facts to their Navy Departments for appropriate action. The subsequent treatment of the nationals of D, L, and M may become a matter for action of those states.

Situation II

NAVAL PROTECTION DURING STRAINED RELATIONS

The relations of states X and Y, non-American states, are strained. Neither state has declared war though the military and naval forces have within a month exchanged shots. A law identical with the Joint Resolution of the United States approved May 1, 1937, providing for restrictions on export of arms, etc., is similarly operative in American states C, D, E, and F. Only states C and D under their laws proclaim a state of war to exist between X and Y.

(*a*) State X seizes articles on board a merchant vessel of state D which were placed under an embargo by state C but not in the embargo list of any other state.

(*b*) A vessel of war of state Y is just off, but more than three miles, from state D and inspects the cargo of a merchant vessel flying the flag of D and finds articles embargoed by state D.

(*c*) State E has a defensive alliance with states X and F. State E maintains that the embargo law does not apply until proclaimed by E and F.

(*d*) A merchant vessel of state M is passing through the territorial waters of state C having on board articles enumerated under the prohibited list of C. A vessel of war of C brings the vessel to port, and the owners demand immediate release

on the ground of illegal seizure while on innocent passage in the time of peace with goods not liable to seizure.

How far are the acts of the several states and their contentions lawful?

SOLUTION

(*a*) As there is no war and as the law mentioned relating to the export of arms, etc., is national in its effect, the action of state X has no validity under that law even though states C and D have proclaimed that a state of war exists.

(*b*) A vessel of war of state Y has the right to approach a merchant vessel suspected of piracy or other offense against the law of nations for purpose of identification, but the vessel of war of state X has no right to inspect or to take any action in regard to the articles in the cargo of a merchant vessel of state D and embargoed under domestic law.

(*c*) The alliance between states E, F, and X would bind state E for defense and not before state X or F is at war with a third state.

(*d*) The embargo legislation is purely domestic and a vessel of war of state C may not lawfully interfere with a merchant vessel of state M when on innocent passage through the territorial waters of state C.

NOTES

Strained relations.—Strained relations between tribes in early days and between groups of less developed peoples in some parts of the world have led to contests of different types. Some of these show parallels to contests between states in later

days. Sometimes the differences were settled by a competition in the exchange of epithets or vituperation. Wars of words or of notes have been known in modern times.

Efforts to bring about perpetual peace among states have been made from time to time for many years. Some of the plans devised for that purpose have received wide nominal support, but when brought to a crucial test have thus far been ineffective. Even the World War, 1914–18, having as one of its objectives, "war to end war," has not put an end to conflicts between states even though these may not reach the proportions of or may not be declared to be war. If a stage in international development should be reached when wars would be no more it can scarcely be hoped that there will be no friction between states when there are so many racial, economic, political, and other differences.

In considering the very existence of states, there is an implication of differences which have led to their formation. Referring to these matters at the Naval War College in 1933 it was said:

> "Strained relations is a term which has been used to indicate an attitude of opposition of states to one another in any degree short of war. Such relations often lead to war but are not war and the existence of these relations does not bring into operation the law of war." (1933 Naval War College, International Law Situations, p. 75.)

Use of force.—Even though the custom of formal declaration of war declined during the seventeenth, eighteenth, and nineteenth centuries, the use of force by one state against another was common. With the further development of professional armies and navies, the need of clearer rules in regard to war became evident. Such rules for the

conduct of war were gradually elaborated for war on land as in the Lieber Code during the Civil War in the United States which became the basis of other codes.

The conduct of war on the sea as affecting states not parties to the war was the subject of attention by the British courts in the days of Lord Stowell and from the beginning of the nineteenth century.

War had been defined as "that state in which a nation prosecutes its right by force." There had been no adequate definition of the degree of force essential to constitute war and there was, as there still is, a wide difference of opinion as to what is a nation's "right," or what is a "just war."

Battles had been fought against Mexican troops before the Congress of the United States passed the Act of May 13, 1846, which recognized a state of war as existing with Mexico.

Courts might have to decide in the nineteen century whether war existed on a given day and a state might by a proclamation announce that war commenced on some date prior to the declaration. This is evident in such cases as that of the *United States of America* v. *Pelly and another* in 1899. In this case, Mr. Justice Bingham said:

"I will state why it is a fact that a state of war then existed. An act of hositility had been committed on April 22 by American men-of-war against Spanish traders, or, at all events, against one Spanish trader, which act, in my opinion, was only consistent with the existence of a state of war. Further, on April 22 the American President issued a proclamation in which he declared a general blockade of Cuba. A few days later the Congress passed a resolution authorizing a formal state of war, but, in so doing, recorded, what was undoubtedly the fact, that a state of war had existed from some days previously." (4 Commercial Cases [1899] 100.)

There was also much uncertainty as to when the Russo-Japanese war began in 1904. It was decided that when the Japanese fleet sailed from Sasebo, February 6, 1904, at 7 A. M., "with the object of opening hostilities," there was a state of war and captures were legal. From the late nineteenth century when fleets sailed under sealed orders for maneuvers or practice, there might be serious misunderstandings since foreign powers were free to determine the "object" of the movement of the fleet.

When states were not under obligation to declare war, there was frequent resort to the use of force which was announced to be reprisals, pacific blockade, or some other measure short of war. Either state might regard such an act as the commencement of war. Such a condition left third states uncertain as to whether war really existed or as to when it actually began. This introduced many complications though some states maintained that the advantage of a possible surprise attack should not be renounced. Others argued that under modern conditions there was little possibility of surprise in the commencement of war.

Distinction between belligerent and protective action.—The situation arising in Russia in 1919 became the subject of correspondence between the Commission to Negotiate Peace and the American Secretary of State. In replying to certain proposals, the acting Secretary of State said, on July 18, 1919, "A blockade before a state of war exists is out of the question" (Foreign Relations, U. S., 1919, "Russia," p. 153), and at this time it was generally accepted that war without a declaration would be contrary to the law. The distinction be-

tween belligerency and military operations was also discussed in the Commission, and a communication was, at the request of M. Clemenceau, transmitted to the President of the United States on July 27, 1919:

"British, French, Italian, Japanese members of the Council of Five, respectfully offer the following on the President's message relating to neutral trade in the Gulf of Finland. They do not desire to express any opinion upon the statement of international law laid down in the telegram. It may well be true that where there is no state of belligerency there can be no legal blockade; but they would point out that the situation in Russia and in the Gulf of Finland is at the present moment such as hardly to permit rigid application of rules which in ordinary cases are quite uncontested. Language in which international law is expressed is fitted to describe the relations between the organized states on the one hand and unorganized chaos on the other hand. Russia during this period of transition is not a state but a collection of 'de facto' governments at war with each other and though it is quite true to say that the Allied and Associated Powers are not in a state of belligerency with Russia it is also true they are involved in military operations with one of these 'de facto' governments and that they are supplying arms and ammunition to the others." (*Ibid.*, p. 154.)

To this the President replied on August 2, 1919:

"The President is not unmindful of the serious situation which exists in relation to neutral trade in the Baltic with the Russian ports controlled by the Bolsheviks. He has given careful consideration to the arguments advanced in the message transmitted at the request of M. Clemenceau and is not unmindful of their force in support of the proposed interruption of commerce with the ports mentioned. However, while he fully understands the reasons for employing war measures to prevent the importation of munitions and food supplies into the portion of Russia now in the hands of the Bolsheviks, he labors under the difficulty of being without constitutional right to prosecute an act of war such as a blockade affecting neutrals unless there has been a

declaration of war by the Congress of the United States against the nation so blockaded.

"The landing of troops at Archangel and Murmansk was done to protect the property and supplies of the American and Allied Governments until they could be removed. The sending of troops to Siberia was to keep open the railway for the protection of Americans engaged in its operation and to make safe from possible German and Austrian attack the retiring Czechoslovaks. The furnishing of supplies to the Russians in Siberia, while indicating a sympathy with the efforts to restore order and safety of life and property, cannot be construed as a belligerent act." (*Ibid.*, p. 155.)

Purpose of Act of May 1, 1937.—In reply to a question of November 25, 1937, as to the use of the Act of May 1, 1937,[1] as an instrument of policy, the Secretary of State said:

"With regard to the eighth question, the entering into force of the restrictive provisions of the Neutrality Act of May 1, 1937, is left to and is dependent upon decision of the President by a finding that 'there exists a state of war.' The policy of the Department of State in reference to this Act is dependent upon that decision. The Department of State keeps constantly in mind the fact that the principal purpose of the Act is to keep the United States out of war." (International Conciliation, No. 336, p. 36; Department of State, Press Releases, XVII, No. 428, p. 416.)

National and international neutrality laws.—It is desirable to point out again that "Domestic neutrality laws do not necessarily have any effect upon the international law of neutrality either in limiting or extending its scope." (1936 Naval War College, International Law Situations, p. 98.) A domestic law prohibiting exportation of arms to a foreign state or states when these states have not declared war is wholly national and may be repealed or declared inoperative in whole or in part

[1] *Post*, p. 171.

at any time by the state which enacted the law. Such a law does not confer upon any foreign state a right to treat the articles named in the prohibition as contraband of war, or to treat the vessels transporting the articles as guilty of the carriage of contraband. Indeed as a domestic measure a state in the time of peace or even when relations are strained between foreign states may, in absence of treaty agreement, prohibit under penalty of domestic law the exportation of certain articles, extend the list, or abolish the restrictions altogether from time to time as it may see fit. In time of lawful war the list of articles liable to penalty may be determined by the belligerent and the belligerent may under international law capture the goods and apply the penalty. The government of the United States has often in time of unsettled conditions changed its policy in regard to the export of certain articles. Domestic laws which may have an effect even upon international agreements relating to shipment of arms may be enacted or repealed. This was evident in a communication of the Secretary of State Hughes to the Chargé in Japan, March 19, 1921:

"A joint resolution of Congress approved March 3, 1921, repealing certain sections of the Espionage Act of June 15, 1917, has deprived this Government of any legal basis under which it can control shipments of arms and munitions to China as provided for in the joint declaration made on May 5, 1919 by the diplomatic representatives of Great Britain, France, Italy, Spain, The Netherlands, Denmark, Belgium, Portugal, Brazil and Japan. This Government has not changed its policy in this regard however and is seeking from Congress legislation necessary to enable it to continue control over shipments of arms to China and in the meantime will refuse to support any efforts on the part of Ameri-

can citizens to ship or sell arms to China. You will bring the above to the attention of the Japanese Foreign Office for its confidential information and express this Government's hope that nothing will be done to change the present policy of the Powers in this matter." (Foreign Relations, U. S., 1921, I, 552.)

Further correspondence shows that so far as the United States was concerned, the whole matter of prohibition of shipment of arms was regarded as subject to domestic legislation and that international agreements in regard thereto would be correspondingly limited by domestic regulations.

The Government of the United States in 1920 without ratifying the Arms Traffic Convention and Protocol, September 10, 1919, announced that it adopted the spirit of this Convention "as a matter of policy, insofar as concerns government owned or controlled arms." (Foreign Relations, U. S., 1920, I, 207.)

Hostilities without declaration.—An act of hostility by an armed force of a state without some form of previous public notification was in early times regarded as an act of perfidy and previous notification in the days of Rome was usually a formal ceremony. Without such ceremony the war might not be considered a just war. It was argued that if the object of the war might be obtained without the use of force, it was honorable that the state against which hostilities were to be aimed should have opportunity to afford satisfaction before force was used. The mediaeval conception of chivalry demanded this degree of fair dealing in a just war. Grotius in the early seventeenth century regarded formal declaration as the rule if war was to be recognized internationally, though there might be

a demand for satisfaction with conditional declaration.

Prior declaration was less general from the late seventeenth century. Of about 150 wars during the two centuries from 1700 to 1900 few, not more than one in ten, seem to have been formally declared at all and some like the Spanish-American war of 1898 were declared after hostilities had begun.

As the relations of state to state and of individual to individual change when war begins, it is of great importance to fix the time of the commencement of war. In the early days this was not difficult but during the eighteenth and nineteenth century this became uncertain or impossible.

The formula which at first seemed simple was set up to the effect that "war begins with the first act of hostilities." This phrase was, however, not easy to interpret and sometimes was differently interpreted by courts of the same country at different periods; consequently controversies arose upon the issue of the date of the beginning of the war.

Prior declaration.—In the late nineteenth and early twentieth centuries, a sentiment had been growing in favor of requiring a declaration prior to the opening of war. The Institute of International Law at the session at Ghent in 1906 favored such a regulation.

It was pointed out that diplomatic negotiations settled most differences between states and that a requirement of a declaration before resorting to hostilities would often prevent hostilities, and if a reasoned declaration was required this would be a further deterrent, for states might be reluctant to

make public their motives for going to war. It was argued that a state should not go to war without an ample motive as war disturbed many established relations in the world. Third states should be notified as these states were put under new obligations and these should not be imposed without due notice and good reason. Of course, it was fully understood that the published reason might not always be the true reason, but the honor of the state was involved or, as the French delegate at the Second Hague Conference, 1907, said, "the spirit of loyalty which nations owe to each other in their mutual relations, as well as the common interests of all states," should require previous and unequivocal notice. Any delay would afford more time for pacific settlement.

Declaration of war.—As was shown at the Hague Peace Conference in 1907, there were many reasons for a declaration of war before commencement of hostilities. Many conventions and treaties since 1907 have rested on the presumption that declaration prior to hostilities will be made. For neutral states this is essential in order that they may by proclamation regulate the conduct of their nationals and determine the rights and obligations governing the state under the changed conditions. The use of the neutral ports as places of sojourn of vessels of war of the belligerents and in other respects must be regulated, the amount and character of supplies or of repairs is to be determined and an entirely new legal status is in existence from the commencement of the war. Merchant vessels of neutrals outside of neutral jurisdiction are under obligation to submit to visit and search,

may be taken to a prize court and their cargo may be condemned in whole or in part or the vessel itself may be condemned. The movement of neutral vessels or persons may be restricted or forbidden in certain areas. Even between the belligerents the rights of persons and property assume new aspects. It is conceivable that these facts, together with a required prior declaration, may be a deterrent at times sufficient to prevent hostilities or reckless warlike undertakings.

Hague Convention on declaration of war.—The discussion in 1907 upon the need for declaration prior to hostilities between states showed that it was realized that in cases of civil war such a declaration would not always be expected though it might in some conditions clarify relations.

Hague Convention III relative to the Opening of Hostilities states:

"The Contracting Powers considering that it is important, in order to ensure the maintenance of pacific relations, that hostilities should not commence without previous warning;

"That it is equally important that the existence of a state of war should be notified without delay to neutral Powers; * * *

"ARTICLE 1. The Contracting Powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war.

"ARTICLE 2. The existence of a state of war must be notified to the neutral Powers without delay, and shall not take effect in regard to them until after the receipt of a notification, which may, however, be given by telegraph. Neutral Powers, nevertheless, cannot rely on the absence of notification if it is clearly established that they were in fact aware of the existence of a state of war." (36 Stat. 2259.)

In explaining Article 1, the report of the Commission entrusted with the topic said:

"Two distinct cases are provided for. When a dispute occurs between two States, it will ordinarily lead to diplomatic negotiations more or less lengthy, in which each party attempts to have its pretentions recognized, or at least to secure partial satisfaction. If an agreement is not reached, one of the Powers may set forth in an ultimatum the conditions which it requires and from which it declares it will not recede. At the same time it fixes an interval within which a reply may be made and declares that, in the absence of satisfactory answer, it will have recourse to armed force. In this case there is no surprise and no equivocation. The Power to which such an ultimatum is addressed can come to a decision with a full knowledge of the circumstances; it may give satisfaction to its adversary or it may fight.

"Again, a dispute may arise suddenly, and a Power may desire to have recourse to arms without entering upon or prolonging diplomatic negotiations that it considers useless. It ought in that case to give a direct warning of its intention to its adversary, and this warning ought to be explicit.

"When an intention to have recourse to armed force is stated conditionally in an ultimatum, a reason is expressed, since war is to be the consequence of a refusal to give the satisfaction demanded. This is, however, not necessarily the case when the intention to make war is made manifest directly and without a previous ultimatum. The proposal set out above requires that reasons be assigned in this case also. A Government ought not to employ so extreme a measure as a resort to arms without giving reasons. Every one, both in the countries about to become belligerents, and also in neutral countries, should know what the war is about in order to form a judgment on the conduct of the two adversaries. Of course this does not mean that we are to cherish the illusion that the real reasons for a war will always be given; but the difficulty of definitely stating reasons, and the necessity of advancing reasons not well substantiated or out of proportion to the gravity of war itself, will naturally arrest the attention of neutral Powers and

enlighten public opinion." (Proceedings of the Hague Peace Conferences, Translation, Carnegie Endowment of International Peace, I, 132.)

This report of the Commission shows that the Conference was not so naive as to think that the reasons stated for declaring war would always cover all the reasons but that the obligation to give a reason might be to some degree a deterrent.

Further, it may be said that a very effective and automatic sanction making declaration essential was the requirement that declaration be published to third states before these states were under the obligation of neutrals. There could be no contraband, blockade, unneutral service, etc., till the declaration was made known. Third states would be under no obligation to limit the use of their ports for sojourn, the taking on of supplies, repairs, etc., or even the sale of vessels of war might lawfully be made prior to declaration of war.

Embargo Act, 1807.—The conditions which led to the Embargo Act of December 21, 1807, may not recur even though Jefferson hoped it might furnish a valuable lesson for the future. This would be upon the presumption that conditions at the time of a subsequent struggle might closely resemble those at the beginning of the nineteenth century. Almost immediately the exports from the United States fell to a point where that trade was only about one-fifth that of the previous year and conditions in regard to illicit trade in many articles resembled those of the recent prohibition era in the United States. National politics were embittered, leaders previously popular were repudiated, and sectional differences were aggravated. The attitude of citizens of the United States toward the

belligerents became hostile and demands for protection of American rights were frequently made. The embargo was repealed in May 20, 1809, leaving a spirit easily fanned into belligerency a few years later. Since this period of the early nineteenth century, there has been much difference of opinion upon the question as to whether relinquishing or defending neutral rights may be the course more likely to lead a powerful state into a war.

British hovering, 1916.—Even in time of war the authorities of the United States have regarded the sojourn of belligerent vessels of war just outside territorial waters as inconsistent with conduct of a friendly power and as causing unnecessary interference with American commerce.

During the World War, early in October 1914, the Department of State called the attention of the British Ambassador to the fact that the nearness of British vessels of war to the entrance to the port of New York was causing "a very bad impression":

"While, of course, the presence of these vessels does not constitute anything in the nature of a blockade by Great Britain, the effect is to interfere so with our commerce with her enemies as to infringe upon our commercial rights in appearance if not in fact.

"I am writing you personally in regard to this matter, as I have already told you informally that the presence of the *Suffolk* had caused considerable concern and that its continuance might be construed into an unfriendly act, requiring official action. This latter possibility I hope can be avoided." (Foreign Relations, U. S., 1914, Supp., p. 657.)

Other incidents followed and further protests were made by the United States, and a letter of

March 20, 1916, from the British Ambassador to the Secretary of State said:

"My Government has carefully studied the contents of your notes. They are impressed by the fact that no suggestion seems to be made in either of them that British cruisers enter at all within the territorial waters of the United States, and they note that, on the contrary, the effect of the notes is to take exception to proceedings of these vessels when navigating admittedly on the high seas. The objection appears, indeed, to rest upon a claim to distinguish between different parts of the high seas, a claim which causes surprise to His Majesty's Government, who are unaware of the existence of any rules or principles of international law which render belligerent operations which are legitimate in one part of the high seas, illegitimate in another. Under these circumstances it appears desirable that the position taken up by the United States Government should be more clearly defined. I am therefore instructed to have recourse to your courtesy in order to obtain fuller information as to the precise nature and grounds of the claims which are made by your Government, as well as their extent, since my Government are most anxious to recognise in the full any claims of this nature which are well founded in law, but are naturally unable to make a concession of what they regard as their belligerent rights.

"The rights asserted in this respect by the United States Government in previous wars will no doubt be conceded by the United States Government as well founded when exercised by others. It will be in your recollection that my predecessor, Lord Lyons, complained that Rear Admiral Wilkes had ordered the vessels under his command to anchor in such a position as to control the movements of ships desiring to enter or to depart from the port of Bermuda, and that he maintained a system of cruising in the neutral waters of Bermuda in excess of his rights as a belligerent. The charge was thus of a far more serious nature than that which the United States Government now make against His Majesty's ships. Admiral Wilkes in his reply, which was communicated officially by Mr. Secretary of State Seward to His Majesty's Legation on January 15, 1863, asserted that

his vessels 'but maintained a system of cruising outside of the neutral waters of Bermuda in and under our rights as a belligerent.' It is clear, therefore, that this officer of the United States Navy, whose view was evidently endorsed by the United States Government, considered that his proceedings were fully justified so long as he could maintain that they had been restricted to the very practice of which the United States Government now complain, though resorted to in a far less aggravated form by His Majesty's ships, and of which they appear actually to desire to impung the legality." (*Ibid.*, 1916, Supp., p. 759.)

On April 26, 1916, the Secretary of State in a long note stated:

"In reply it may be stated that the Government of the United States advances no claim that British vessels which have been and are cruising off American ports beyond the three-mile limit have not in so doing been within their strict legal rights under international law. The grounds for the objection of the Government of the United States to the continued presence of belligerent vessels of war cruising in close proximity to American ports are based, not upon the illegality of such action, but upon the irritation which it naturally causes to a neutral country." * * *

"In time of peace the mobilization of an army, particularly if near the frontier, has often been regarded as a ground for serious offense and been made the subject of protest by the Government of a neighboring country. In the present war it has even been the ground for a declaration of war and the beginning of hostilities. Upon the same principle the constant and menacing presence of cruisers on the high seas near the ports of a neutral country may be regarded according to the canons of international courtesy as a just ground for offense, although it may be strictly legal." (*Ibid.*, p. 763.)

The British authorities took the position that they could not abandon any of their belligerent rights, but instructions had been given "not to approach Ambrose Light nearer than six miles."

Protests were also made to Germany, France, and Japan in regard to the conduct of vessels of war of these states just off or within territorial waters.

Restriction on exports.—Restriction on exports from one state to another has often been resorted to in order to bring pressure upon the importing state. The reason for the pressure may vary and being most often domestic in character are usually political.

A Joint Resolution of Congress of the United States, approved March 14, 1912, provided:

"That the joint resolution to prohibit the export of coal or other material used in war from any seaport of the United States, approved April twenty-second, eighteen hundred and ninety-eight, be, and hereby is, amended to read as follows:

" 'That whenever the President shall find that in any American country conditions of domestic violence exist which are promoted by the use of arms or munitions of war procured from the United States, and shall make proclamation thereof, it shall be unlawful to export except under such limitations and exceptions as the President shall prescribe any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or Congress.

" 'SEC. 2. That any shipment of material hereby declared unlawful after such a proclamation shall be punishable by fine not exceeding ten thousand dollars, or imprisonment not exceeding two years, or both.' " (37 Stat. 630.)

By presidential proclamation this resolution was made immediately applicable to Mexico when a conditon of "domestic violence" prevailed.

In 1914 after the outbreak of the World War and while the United States was neutral, a Circular of the Department of State, October 15, 1914,

referring to trade in contraband and sales to belligerents, said:

"Furthermore, a neutral government is not compelled by international law, by treaty, or by statute to prevent these sales to a belligerent. Such sales, therefore, by American citizens do not in the least affect the neutrality of the United States.

"It is true that such articles as those mentioned are considered contraband and are, outside the territorial jurisdiction of a neutral nation, subject to seizure by an enemy of the purchasing government, but it is the enemy's duty to prevent the articles reaching their destination, not the duty of the nation whose citizens have sold them. If the enemy of the purchasing nation happens for the time to be unable to do this that is for him one of the misfortunes of war; the inability, however, imposes on the neutral government no obligation to prevent the sale.

"Neither the President nor any executive department of the Government possesses the legal authority to interfere in any way with trade between the people of this country and the territory of the belligerent. There is no act of Congress conferring such authority or prohibiting traffic of this sort with European nations, although in the case of neighboring American Republics Congress has given the President power to proclaim an embargo on arms and ammunition when in his judgment it would tend to prevent civil strife." (Foreign Relations, U. S. 1914, Sup., p. 574.)

Many restrictions were from time to time imposed upon exportation from the United States of munitions and the like under the act of June 15, 1911, which had entrusted to the President this power.

The restrictions placed on exportation and importation during the World War were not always for military reasons or on the ground of neutral obligations, but the disturbance of economic rela-

tions sometimes made necessary the conservation of national resources by special regulations.

Attitude of the United States in 1921.—In reply to a request from the Oriental Trading Company desiring to ship rifles and ammunition to China, transmitted through the Governor General of the Philippine Islands, the Department of State informed the Secretary of War of its attitude on September 12, 1921, as follows:

"There has been an understanding since May, 1919, among the powers who were allied and associated in the war, whereby they undertook to restrict shipments by their nationals to China of arms and munitions of war as long as it was obvious that the importation of such military equipment into China tended only to prolong the present unfortunate state of civil strife in that country. This Government was enabled to fulfill its part of that obligation by reason of those provisions of the Espionage Act which gave the Executive control over exports, through the intermediary of the War Trade Board.

"Certain provisions of the Espionage Act of June 15, 1917, were repealed by a Joint Resolution of Congress, which was approved March 3, 1921. Among those provisions thus repealed were those which provided for control over exports, and the Executive has therefore been deprived of any legal basis upon which to exercise further control over shipments of arms to China. There would appear to be no reason for believing that conditions in China at the present time warrant any change in the policy of this Government in this matter, and the Department of State is therefore seeking to obtain legislation to enable it to continue to cooperate with the powers who are parties to the joint declaration of May 5, 1919. It is expected that the matter will be brought up when Congress convenes the latter part of the present month. In the meantime, the Department of State, as a matter of policy, is refusing to lend any encouragement or support to American manufacturers of munitions who desire to sell or ship arms and munitions of war to China." (Foreign Relations, U. S., 1921, I, 560.)

Restrictions on carriage of munitions to Spain.—During the "civil strife" in Spain there were numerous attempts to restrict commerce both by national legislation and international agreement.

The British Merchant Shipping Act (Carriage of Munitions to Spain), 1936 (1 Edw. 8, c. 1), applying in general to all ships under British registry (except from dominions and dependencies) carrying munitions etc., provided:

"I. 1. No article to which this Act applies shall be discharged at any port or place in Spanish territory or within the territorial waters adjacent thereto from a ship to which this Act applies, and no such article shall be transhipped on the high seas from any such ship into any vessel bound for any such port or place, and no such article consigned to or destined for any such port or place shall be taken on board or carried in any such ship." (31 A. J. I. L. [1937], Doc. Supp., p. 100.)

It was also provided as to an officer empowered to enforce this Act, that—

"(*a*) he may go on board the ship and for that purpose may detain the ship or require it to stop or to proceed to some convenient place;

(*b*) he may require the master to produce any documents relating to any cargo which is being carried or has been carried on the ship;

(*c*) he may search the ship and examine the cargo and require the master or any member of the crew to open any package or parcel which he suspects to contain any articles to which this Act applies;

"(*d*) he may make any other examination or inquiry which he deems necessary to ascertain whether this Act is being or has been contravened;

"(*e*) if it appears to him that this Act is being or has been contravened, he may, without summons, warrant, or other process, take the ship and her cargo and her master and crew to the nearest or most convenient port in a country to which this Act extends, in order that the alleged contraven-

tion may be adjudicated upon by a competent court.' (*Ibid.*, p. 101.)

The United States by joint resolution, January 8, 1937, prohibited the export of arms, ammunition, or implements of war to Spain under penalty of fine or imprisonment (50 Stat., pt. I, p. 3). There were many other regulations referring to the Spanish conflict giving a degree of supervision to foreign states in order that the area of the conflict might be limited.

Attitude of United States Navy.—The Navy of the United States through its wide contacts has been confronted with many situations where strained relations prevailed. These strained relations might have been between the United States and a foreign state or between two foreign states in a manner involving the United States. As a guide for officers of the Navy of the United States, the Regulations prescribe:

"722. On occasions where injury to the United States or to citizens thereof is committed or threatened, in violation of the principles of international law or treaty rights, the commander in chief shall consult with the diplomatic representative or consul of the United States, and take such steps as the gravity of the case demands, reporting immediately to the Secretary of the Navy all the facts. The responsibility for any action taken by a naval force, however, rests wholly upon the commanding officer thereof.

"723. The use of force against a foreign and friendly state, or against anyone within the territories thereof, is illegal.

"The right of self-preservation, however, is a right which belongs to States as well as to individuals, and in the case of States it includes the protection of the State, its honor, and its possessions, and the lives and property of its citizens against arbitrary violence, actual or impending, whereby the State or its citizens may suffer irreparable injury. The con-

ditions calling for the application of the right of self-preservation can not be defined beforehand, but must be left to the sound judgment of responsible officers, who are to perform their duties in this respect with all possible care and forbearance. In no case shall force be exercised in time of peace otherwise than as an application of the right of self-preservation as above defined. It must be used only as a last resort, and then only to the extent which is absolutely necessary to accomplish the end required. It can never be exercised with a view to inflicting punishment for acts already committed.

"(1) Whenever, in the application of the above-mentioned principles, it shall become necessary to land an armed force in foreign territory on occasions of political disturbance where the local authorities are unable to give adequate protection to life and property, the assent of such authorities, or of some one of them, shall first be obtained, if it can be done without prejudice to the interests involved.

"(2) Due to the ease with which the Navy Department can be communicated with from all parts of the world, no commander in chief, flag officer, or commanding officer shall issue an ultimatum to the representatives of any foreign Government, or demand the performance of any service from any such representative that must be executed within a limited time, without first communicating with the Navy Department, except in extreme cases where such action is necessary to save life."

American policy, 1937.—After referring to the disturbed international relations prevailing in 1937 and to the fact that serious hostilities anywhere were a deep concern of the whole world, Secretary of State Hull said on July 6:

"This country constantly and consistently advocates maintenance of peace. We advocate national and international self-restraint. We advocate abstinence by all nations from use of force in pursuit of policy and from interference in the internal affairs of other nations. We advocate adjustment of problems in international relations by processes of peaceful negotiation and agreement. We advocate faithful ob-

servance of international agreements. Upholding the principle of the sanctity of treaties, we believe in modification of provisions of treaties, when need therefor arises, by orderly processes carried out in a spirit of mutual helpfulness and accommodation. We believe in respect by all nations for the rights of others and performance by all nations of established obligations. We stand for revitalizing and strengthening of international law. We advocate steps toward promotion of economic security and stability the world over. We advocate lowering or removing of excessive barriers in international trade. We seek effective equality of commercial opportunity and we urge upon all nations application of the principle of equality of treatment. We believe in limitation and reduction of armament. Realizing the necessity for maintaining armed forces adequate for national security, we are prepared to reduce or to increase our own armed forces in proportion to reductions or increases made by other countries. We avoid entering into alliances or entangling commitments but we believe in cooperative effort by peaceful and practicable means in support of the principles hereinbefore stated." (Department of State, Press Releases, XVII, No. 407, July 17, 1937, p. 41.)

This statement of policy was circulated to other governments in the hope that if they "should approve the principles of the declaration as the underlying bases for international relations, the cumulative effect of their approval would do much to revitalize and to strengthen standards desirable in international conduct." (*Ibid.*, p. 87.)

There was a general approval as shown in replies from states on the different continents.

"*Brazilian Minister of Foreign Affairs.*

"The Ministry for Foreign Affairs was officially informed concerning the declaration of the principles which orientate the foreign policy of the United States made on the 16th of July by the Secretary of State, Mr. Cordell Hull. The statement of the Secretary of State having been brought to the attention of the President of the Republic by the Minister for

Foreign Affairs, the latter received instructions from the President to make public that the Brazilian Government, entirely sharing the point of view of the Government of the United States concerning the world international political situation, fully agrees with those declarations and gives complete support to the principles formulated therein, which have already been warmly advocated in the inter-American Conference for the maintenance of peace and at other international political assemblies and which it will do everything possible to put into practice by the most convenient methods at every opportunity which arises." (*Ibid.*, p. 89.)

"*Note from the French Minister of Foreign Affairs to the American Ambassador to France.*

"Today, more than ever before, the need is evident for solidarity between all the nations of the world and vigilant attention to every situation which might lead to a resort to force. In counseling moderation in the realm of international affairs and national affairs; in advising nations not to interfere in the internal affairs of other nations; in recommending the settlement of differences by negotiations and peaceful agreements; in insisting that international obligations should be faithfully observed and carried out in a spirit of justice, mutual helpfulness, and reconciliation, Mr. Cordell Hull has stressed those wholesome methods which should assure the maintenance of peace." (*Ibid.*, p. 94.)

"*Message From the British Minister for Foreign Affairs to the American Ambassador to Great Britain.*

"I have read with deep interest Mr. Hull's statement on foreign policy of the 16th of July, the text of which was communicated to me by the United States Ambassador. I cordially welcome and am in full agreement with the expression of opinion contained therein on international problems and situations both in the political and economical field. Mr. Hull's views on the ever increasing need for the preservation of peace, the vital importance of international cooperation in every sphere, and the methods which are recommended for obtaining these objectives are shared in common by His Majesty's Government in the United Kingdom." (*Ibid.*, p. 95.)

"*Statement by the Japanese Government Handed to the Secretary of State by the Japanese Ambassador.*

"The Japanese Government wishes to express its concurrence with the principles contained in the statement made by Secretary of State Hull on the 16th instant concerning the maintenance of world peace. It is the belief of the Japanese Government that the objectives of those principles will only be attained, in their application to the Far Eastern situation, by a full recognition and practical consideration of the actual particular circumstances of that region." (*Ibid.*, p. 130.)

"*Statement by the South African Prime Minister and Minister of External Affairs of the American Chargé in the Union of South Africa.*

"The statement of foreign policy by Mr. Cordell Hull in every respect conforms with the views held and policy adopted from time to time by the Government of the Union, for the purpose of defining its own attitude towards other states and indicates the principles of conduct which it expects to be observed by them in their dealings with the Union.

"I, therefore, heartily approve the statement of policy by the Secretary of State, so far an the Union is concerned under present circumstances.

"I say: *under present circumstances*, for I cannot help feeling that if the Union had been in the position of a state laboring under wrongs *confirmed* or perpetuated by agreement at the point of the bayonet, such agreement could have little claim to any degree of sanctity; and certainly to none when the agreement had been obtained in a manner violating the established usage of war, or contrary to the dictates of international consciences. Before such an agreement can be accepted as enjoying the *principle of the sanctity of treaties* there should, it seems to me, first be an equitable measure of redress purifying it of the excesses resulting therefrom. In other words, a revision of the provisions of such an agreement could well be insisted upon by the state wronged prior to its approval of the *principle of the sanctity of treaties.*

"If this view is correct, Mr. Hull's advocacy of *faithful observance of international agreements* would not require qualification of a restrictive nature." (*Ibid.*, p. 103.)

The replies from many governments were in the form of somewhat general comments upon the principles underlying the note of Mr. Hull, though occasionally there was an intimation that while the principles were praiseworthy what was particularly needed was the will among states to make the principles practically applicable. A considerable number of states implied that a long step toward the application of the principles might be found in some system of collective security.

Innocent passage.—In the Draft Convention on Territorial Waters, Research in International Law, Harvard Law School, Article 14, the following was proposed:

"A state must permit innocent passage through its marginal seas by the vessels of other states, but it may prescribe reasonable regulations for such passage." (23 A. J. I. L., Spec. Sup., [1929], p. 295.)

In the comment on this article, it was said:

"Even for vessels entitled to exercise the right of innocent passage it is obviously necessary that each state should be permitted to make reasonable regulations governing that passage, subject only to the restriction that these regulations be uniform for all states. Such regulations may, of course, distinguish between different kinds of vessels. For example, a littoral state might require all submarine vessels of other states to navigate upon the surface in order that shipping in the marginal sea may not be subjected to unknown risks." (*Ibid.*)

The question of innocent passage arose in many forms in consequence of attempts of the United States to enforce the liquor prohibition amendment to the Constitution (Article 18), 1919, repealed 1933. In the British Parliament such ques-

tions as the following were raised with the Prime Minister:

"In view of the prohibition laws of the United States and their effect on British shipping and the near approach of 10th June, he can now state what is the policy of His Majesty's Government on this question; and whether they will still adhere to the long accepted international practice under which the laws of its own flag govern and regulate the rights, duties and obligations on board a ship, whether on the high seas or within the jurisdiction of any other nation?" (Parliamentary Debates, Commons, 5th Series, CVXVII (1923), 1972.)

To this question the Prime Minister replied:

"His Majesty's Government do not contend that a ship entering the territorial waters of a country does not subject itself to the jurisdiction of that country, but, as a matter of international comity, such jurisdiction is not generally exercised except to restrain acts likely to disturb public order. No possible disturbance to public order in the United States nor injury to any other United States interest can arise from the existence of liquor under seal on board a ship in United States territorial waters. His Majesty's Government accordingly suggested to the United States Government that the proposed Regulation is one which might properly be discussed with the other maritime Powers before it is enforced, but I understand that the United States Government do not see their way to comply with this request." (*Ibid.*)

After negotiation a treaty with Great Britain containing the following Article was adopted and ratified on May 22, 1924:

"Article I. The High Contracting Parties declare that it is their firm intention to uphold the principle that 3 marine miles extending from the coastline outwards and measured from low-water mark constitute the proper limits of territorial waters." (43 Stat., Pt. 2, p. 1761.)

Similar treaties were negotiated with other states and the right of innocent passage was generally accepted.

General conclusions.—Neither state X nor state Y has declared war. These states have no right to claim to be acting as belligerents nor to treat other states as neutrals. There would, therefore, be no right to visit and search as a measure of war. No contraband list could be declared, no blockade could be established, nor could there be unneutral service.

A state may at any time establish an embargo and name in the list of embargoed goods such articles as it sees fit. There is always the possibility that some state or states may consider such an embargo as an unfriendly act, whether it restricts the movement of domestic or foreign goods. An embargo is purely domestic and implies no right to exercise authority outside the limits of the jurisdiction of a state. The enforcement of an embargo act is, in absence of specific treaty engagements, a matter for the state establishing the embargo.

Alliances between states are for the objects mentioned and are usually strictly interpreted. A defensive alliance would be effective when one of the states parties to the alliance is attacked. The embargo confers no authority over ships of third states on the high sea. The right to enforce an embargo within the jurisdiction gives no right to deny the right of innocent passage, though, of course, measures may be taken to prevent abuse of the right. This does not confer the right of visit, search, seizure, and condemnation.

A state has a right to go to war. The existence of war changes the relations of all states. Other

states have a right to know when the change takes place, as they must adapt their conduct to the changed relationship. War has always and naturally aimed to obtain all possible advantages, and neutrality has limited belligerent action; hence there has been a conflict of interest between the belligerents and the neutrals.

SOLUTION

(*a*) As there is no war and as the law mentioned relating to the export of arms, etc., is national in its effect, the action of state X has no validity under that law even though states C and D have proclaimed that a state of war exists.

(*b*) A vessel of war of state Y has the right to approach a merchant vessel suspected of piracy or other offense against the law of nations for purpose of identification, but the vessel of war of state X has no right to inspect or to take any action in regard to the articles in the cargo of a merchant vessel of state D and embargoed under domestic law.

(*c*) The alliance between states E, F, and X would bind state E only for defense and not before state X or F is at war with a third state.

(*d*) The embargo legislation is purely domestic and a vessel of war of state C may not lawfully interfere with a merchant vessel of state M when on innocent passage through the territorial waters of state C.

SITUATION III

JURISDICTION AND POLAR AREAS

States O and X as allies are at war with states T and Y which are allied. Other states are neutral. States M, N, O, and P have land bordering on or have made claims to jurisdiction over polar areas.

(*a*) State M prohibits aircraft of all descriptions and nationalities from entering its jurisdiction, and orders, under penalty of being shot down, an aircraft of state O to alight when it is flying over the ice ten miles polarward from the coast.

(*b*) State O orders closed a radio station established by state N on the ice polarward fifty miles from the coast of state O and previously open to the use of all.

(*c*) State O prohibits the entrance of any aircraft, other than those of state X, polarward from its coast.

(*d*) A regular aircraft service is maintained between state M and state P and the route passes near the pole. A state M aircraft in this service, in a disabled condition, alights on the ice five miles coastward from the pole in the direction of state O, but one hundred miles from any land. State O learning of this sends an aircraft to seize the aircraft of state M as having violated the jurisdiction of state O.

(*e*) State P proclaims an open water route ten miles polarward off its coast but two miles from

permanent coast ice to be closed to all navigation during the war.

(*f*) State N proclaims a similar open water route closed to vessels of war and to all submarines except neutral submarines navigating on the surface with identifying flags displayed.

How far are the acts of the several states and their contentions lawful?

SOLUTION

(*a*) State M may lawfully prohibit the flight of aircraft above its territorial and maritime jurisdiction.[1]

It is not lawful to interfere with the flight of aircraft outside this space.

(*b*) State O may not lawfully order the radio station of state N to be closed though it may protest to state N against any violation of neutrality in its use.

(*c*) State O may lawfully prohibit or regulate the entrance to its jurisdiction of any or all aircraft.

(*d*) State O may not lawfully seize the aircraft of state M.

(*e*) State P may not lawfully prohibit innocent passage though it may issue regulations essential to its own protection.

(*f*) State N may lawfully prohibit the entrance or regulate the movements of vessels of war or regulate the movements of other vessels within its territorial waters when essential for its protection.

[1] As yet there is no international agreement upon the limit of maritime jurisdiction though a minimum of three miles is generally recognized.

NOTES

Jurisdiction.—The term "territory" and the term "jurisdiction" have often been confused and the courts have been called upon to interpret their meaning. The Federal Court referring to the meaning of the word "territory" said:

"Various meanings are sought to be attributed to the term 'territory' in the phrase 'the United States and all territory subject to the jurisdiction thereof.' We are of opinion that it means the regional areas—of land and adjacent waters—over which the United States claims and exercises dominion and control as a sovereign power. The immediate context and the purport of the entire section show that the term is used in a physical and not a metaphorical sense—that it refers to areas or districts having fixity of location and recognized boundaries. See *United States* v. *Bevans*, 3 Wheat. 336, 390, 4 L. Ed. 404. It now is settled in the United Statse and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays and other enclosed areas of the sea along its coast and a marginal belt of the sea extending from the coast line outward a marine league, or three geographic miles." (*Lam Mow* v. *Nagle*, 24 F. (2d) 316 [1928].)

Courts of other countries have made a clear distinction between territory and jurisdiction as in the case of continuous pursuit when pursuit of a vessel is commenced within the territorial waters and continued upon the high sea as a lawful exercise of jurisdiction without any claim to extension of territory. (*The Ship North* v. *The King;* 37 Canada, S. C. R. 385 [1905].) Jurisdiction is the right to exercise state authority and may extend where property or domain does not exist.

Acquisition of jurisdiction.—The common methods of acquisition of territorial jurisdiction have

been: (1) discovery, (2) occupation, (3) conquest, (4) cession, (5) prescription, (6) accretion, and (7) lease. In the polar region the main questions relate to (1) discovery and (2) occupation. Early claims on the ground of discovery were often fantastic in extent. Not merely Protestant Powers but also Catholic Powers queried the authority of the Pope in assigning the lands of the New World to Spanish and Portuguese discoverers. Even Francis I of Spain in the sixteenth century demanded evidence in the will of Adam which would deprive his country of the right to acquire territory by discovery in the New World. Controversies over priority of discovery were common. Beacons, flags, monuments, etc., were set up as evidence of title, but it was soon demanded that something more than mere discovery be required.

During the early nineteenth century there were many problems arising on the ground that occupation of an effective nature must be shown to give good title, and a mere intention to occupy is not sufficient.

Notification and occupation.—In early days discovery and occupation were considered essential to title in an area not previously under the jurisdiction of a recognized state. Later, particularly from the middle of the nineteenth century, as the region of possible discovery became very limited, the idea that proposed occupancy should be made known by notification was introduced. This is evident in the declarations of the General Act of the Conference of Berlin, February 26, 1885:

"Art. 34. La Puissance qui dorénavant prendra possession d'un territoire sur les côtes du Continent Africain situé en dehors de ses possessions actuelles, ou qui, n'en ayant pas

eu jusque-là, viendrait à en acquérir, et de même la Puissance qui y assumera un Protectorat, accompagnera l'acte respectif d'une Notification adressée aux autres Puissances Signataires du présent Acte, afin de les mettre à même de faire valoir, s'il y a lieu, leurs réclamations.

"ART. 35. Les Puissances Signataires de present Acte reconnaissent l'obligation d'assurer, dans les territoires occupés par elles, sur les côtes du Continent Africain, l'existence d'une autorité suffisante, pour faire respecter les droits acquis et, le cas échéant, la liberté du commerce et du transit dans les conditions où elle serait stipulée." (76 Br. & For. State Papers, p. 19.)

The Bulama case, 1870.—There had been a long pending controversy in regard to sovereignty over the island of Bulama off the mouth of the Rio Grande river on the west coast of Africa. Portuguese discovery in 1446 was admitted. Later there had been periods of British and Portuguese occupation and various cessions by native chiefs. The question as to title was at length referred to the President of the United States as arbitrator. The President delegated the handling of the case to Mr. J. C. Bancroft Davis, then Assistant Secretary of State. In the report the opinions of Vattel cited by the British were held applicable to this case. Discovery would be a good title, "provided it was soon after followed by a real possession," settlement, and actual use.

It was further added that:

"It is to be observed, in qualification of these rules, that countries inhabited by savage tribes may, under well-established rules of public law, be so occupied and possessed by the representatives of a Christian power as to dispossess the native sovereignty and transfer it to the Christian power. The word 'uninhabited' in the extract from Vattel must therefore be taken with this limitation.

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"It is also to be remarked that islands in the vicinity of the mainland are regarded as its appendages: that the ownership and occupation of the mainland includes the adjacent islands, even though no positive acts of ownership may have been exercised over them." (2 Moore, History and Digest of the International Arbitrations to which the United States has been a Party, p. 1919.)

Institut de Droit International, 1888.—After long discussion of the question of occupation, the Institute of International Law, at the meeting held at Lausanne in 1888, adopted a *projet* as follows:

"Article 1.—L'occupation d'un territoire à titre de souveraineté ne pourra être reconnue comme effective que si elle réunit les conditions suivantes:

"1° La prise de possession d'un territoire enfermé dans certaines limites, faite au nom du gouvernement;

"2° La notification officielle de la prise de possession.

La prise de possession s'accomplit par l'établissement d'un pouvoir local responsable, pourvu de moyens suffisants pour maintenir l'ordre et pour assurer l'exercice régulier de son autorité dans les limits du territoire occupé. Ces moyens pourront être empruntés à des institutions existantes dans le pays occupé.

"La notification de la prise de possession se fait, soit par la publication dans la forme qui, dans chaque Etat, est en usage pour la notification des actes officiels, soit par la voie diplomatique. Elle contiendra la détermination approximative des limites du territoire occupé." (X Annuaire de l'Institut de Droit International, p. 201.)

British position, 1889.—In a communication of the Marquis of Salisbury of December 26, 1889, regarding Portuguese claims to territories in the vicinity of Zambesi, it was said:

"The fact of essential importance is, that the territory in question is not under the effective government or occupation of Portugal, and that if it ever was so, which is very doubtful, that occupation has ceased during an interval of

more than two centuries. During the whole of that period the Government of Portugal has made no attempt either to govern or civilize or colonize the vast regions to which a claim is now advanced, and it may be said, with respect to a very large portion of them, that no Portuguese authority has ever attempted their exploration. The practical attention of that Government has only been drawn to them at last by the successful enterprise of British travellers and British settlers. The Portuguese authorities during that long interval have made no offer to establish in them even the semblance of an effective government, or to commence the restoration of their alleged dominion, even by military expeditions, until they were stimulated to do so by the probability that the work of colonizing and civilizing them would fall to the advancing stream of British emigration. It is not, indeed, required by international law that the whole extent of a country occupied by a civilized Power should be reclaimed from barbarism at once; time is necessary for the full completion of a process which depends upon the gradual increase of wealth and population; but, on the other hand, no paper annexation of territory can pretend to any validity as a bar to the enterprise of other nations if it has never through vast periods of time been accompanied by a reality, and has been suffered to be ineffective and unused for centuries." (81 Br. & For. State Papers, 1888–89, p. 1031.)

Falkland Islands dependencies.—Under British Letters Patent, March 28, 1917, after relating that doubt had arisen as to the limits of certain groups of islands, it was stated by George V:

"1. Now we do hereby declare that from and after the publication of these our Letters Patent in the Government 'Gazette' of our Colony of the Falkland Islands, the Dependencies of our said Colony shall be deemed to include and to have included all islands and territories whatsoever between the 20th degree of west longitude and the 50th degree of West longitude which are situated south of the 50th parallel of south latitude; and all islands and territories whatsoever between the 50th degree of west longitude

and the 80th degree of west longitude which are situated south of the 58th parallel of south latitude." (111 Br. & For. State Papers, 1917–18, p. 16.)

The area to the south of these parallels would seem to extend to the south pole.

Clipperton Island case, 1931.—While the agreement to submit to arbitration the question as to the title to Clipperton Island had been considered between France and Mexico from March 2, 1909, the award was not rendered till January 28, 1931. The island itself was a small coral lagoon nearly 700 miles south west off the coast of Mexico. It had been regarded as of little value and was usually unoccupied. The agreement of 1909 had named the King of Italy as arbitrator. Referring to the title by occupation the arbitrator said:

"Consequently, there is ground to admit that, when in November, 1858, France proclaimed her sovereignty over Clipperton, that island was in the legal situation of *territorium nullius*, and, therefore, susceptible of occupation.

"The question remains whether France proceeded to an effective occupation, satisfying the conditions required by international law for the validity of this kind of territorial acquisition. In effect, Mexico maintains, secondarily to her principal contention which has just been examined, that the French occupation was not valid, and consequently her own right to occupy the island which must still be considered as *nullius* in 1897.

"In whatever concerns this question, there is, first of all, ground to hold as incontestable, the regularity of the act by which France in 1858 made known in a clear and precise manner, her intention to consider the island as her territory.

"On the other hand, it is disputed that France took effective possession of the island, and it is maintained that without such a taking of possession of an effective character, the occupation must be considered as null and void.

"It is beyond doubt that by immemorial usage having the force of law, besides the *animus occupandi*, the actual,

and not the nominal, taking of possession is a necessary condition of occupation. This taking of possession consists in the act, or series of acts, by which the occupying state reduces to its possession the territory in question and takes steps to exercise exclusive authority there. Strictly speaking, and in ordinary cases, that only takes place when the state establishes in the territory itself an organization capable of making its laws respected. But this step is, properly speaking, but a means of procedure to the taking of possession, and, therefore, is not identical with the latter. There may also be cases where it is unnecessary to have recourse to this method. Thus, if a territory, by virtue of the fact that it was completely uninhabited, is, from the first moment when the occupying state makes its appearance there, at the absolute and undisputed disposition of that state, from that moment the taking of possession must be considered as accomplished, and the occupation is thereby completed." (26 A. J. I. L. [1932], p. 393.)

The award does not accept the conventional agreement of the Act of Berlin as applicable but refers back to the status of 1858 when France proclaimed title to the island.

"It follows from these premises that Clipperton Island was legitimately acquired by France on November 17, 1858. There is no reason to suppose that France has subsequently lost her right by *derelictio*, since she never had the *animus* of abandoning the island, and the fact that she has not exercised her authority there in a positive manner does not imply the forfeiture of an acquisition already definitely perfected." (*Ibid.*, p. 394.)

Contiguity and propinquity doctrines.—The claim that contiguity gives special rights to a state over neighboring areas more or less remote and varying in nature has frequently been made and on differing grounds. One of the most common claims has been to islands off the coast of a state, but relatively near. Without other basis for the validity of the claim than mere proximity, the claim has

been regarded as of little weight, as nearness is in itself a relative term.

On January 23, 1925, the United States and the Netherlands agreed to submit to the Permanent Court of Arbitration at The Hague the question as to "whether the Island of Palmas in its entirety forms a part of territory belonging to the United States of America or of the Netherlands territory." In this case the argument for title based on contiguity was advanced among others. The arbitrator, Judge Huber, referring to this, says:

"In the last place there remains to be considered title arising out of contiguity. Although States have in certain circumstances maintained that islands relatively close to their shores belonged to them in virtue of their geographical situation, it is impossible to show the existence of a rule of positive international law to the effect that islands situated outside territorial waters should belong to a State from the mere fact that its territory forms the *terra firma* (nearest continent or island of considerable size). Not only would it seem that there are no precedents sufficiently frequent and sufficiently precise in their bearing to establish such a rule of international law, but the alleged principle itself is by its very nature so uncertain and contested that even Governments of the same State have on different occasions maintained contradictory opinions as to its soundness. The principle of contiguity, in regard to islands, may not be out of place when it is a question of allotting them to one State rather than another, either by agreement between the Parties, or by a decision not necessarily based on law; but as a rule establishing *ipso jure* the presumption of sovereignty in favour of a particular State, this principle would be in conflict with what has been said as to territorial sovereignty and as to the necessary relation between the right to exclude other States from a region and the duty to display therein the activities of a State. Nor is this principle of contiguity admissible as a legal method of deciding questions of territorial sovereignty; for it is wholly lacking

in precision and would in its application lead to arbitrary results." (Scott, Hague Court Reports, 2d Series, p. 111.)

It has been admitted that territorial propinquity may create special relations between neighboring states of which other states may take notice. If states are to be considered as equally entitled to rights and privileges, a third state might be open to criticism if recognizing any right of one to disregard the rights of the other. Just how far territorial propinquity may be a ground for recognition of a special position on the part of one state as regards a neighboring state is an open question, but experience seems to show that the precedents are of doubtful value.

The doctrine of contiguity was naturally advanced in early claims to jurisdiction following discovery. That a certain hinterland appertained to the coast, watershed to a river, etc., was usually admitted. That the title to the coast gave some right in the adjacent waters was an ancient contention. What should be the limit of jurisdiction based upon contiguity was often a question settled by the issue of war when these areas met or overlapped. Some have assimilated the doctrine of contiguity to a type of inferred potential effective occupation, which still leaves a large area for difference of opinion. There has also been a tendency to extend this to a doctrine of propinquity. As the area of the earth's surface which could be regarded as *res nullius* was effectively occupied, the doctrine of propinquity received more attention, but this became rather a matter of politics than of law.

The doctrine of propinquity may also have the political appeal of identity of interest as often advanced in the solidarity of the Americas or might

give rise to special interests as stated in the Lansing-Ishii note of November 2, 1917:

"In order to silence mischievous reports that have from time to time been circulated, it is believed by us that a public announcement once more of the desires and intentions shared by our two Governments with regard to China is advisable.

"The Governments of the United States and Japan recognize that territorial propinquity creates special relations between countries, and, consequently, the Government of the United States recognizes that Japan has special interests in China, particularly in the part to which her possessions are contiguous.

"The territorial sovereignty of China, nevertheless, remains unimpaired and the Government of the United States has every confidence in the repeated assurances of the Imperial Japanese Government that while geographical position gives Japan such special interests they have no desire to discriminate against the trade of other nations or to disregard the commercial rights heretofore granted by China in treaties with other powers.

"The Governments of the United States and Japan deny that they have any purpose to infringe in any way the independence or territorial integrity of China and they declare, furthermore, that they always adhere to the principle of the so-called 'open door' or equal opportunity for commerce and industry in China." (Foreign Relations, U. S., 1917, p. 264.)

In the above note it is recognized that "territorial propinquity creates special relations" and that "Japan has special interests in China, particularly in the part to which her possessions are contiguous," and the two states "mutually declare that they are opposed to the acquisition by any Government of any special rights or privileges," or impairment of the independence or the freedom of commerce of China.

This note was the subject of much diplomatic correspondence and difference of opinion, and the agreement was cancelled by an exchange of notes on April 14, 1923, affirming that an identity of view had been disclosed in the Washington Conference on the Limitation of Armament of the previous year.

That the principle of propinquity would give special relations in an established state which might be a subject of negotiation by a third state was not admitted by China.

"The principle adopted by the Chinese Government towards the friendly nations has always been one of justice and equality; and consequently the rights enjoyed by the friendly nations derived from the treaties have been consistently respected, and so even with the special relations between countries created by the fact of territorial contiguity, it is only in so far as they have already been provided for in her existing treaties. Hereafter the Chinese Government will still adhere to the principle hitherto adopted, and hereby it is again declared that the Chinese Government will not allow herself to be bound by an agreement entered into by other nations." (*Ibid.*, p. 270.)

The tendency to extend the doctrine of contiguity to cover political policies has led some writers to reject it and to denounce the propinquity theory.

This attitude of those who reject the doctrine of contiguity does not usually involve an entire rejection of all claims based upon geographical nearness.

The claim of potential effective occupation is recognized as having legal weight which is demonstrable.

Polar regions.—As other areas of the earth's surface have become known and have been subjected to the jurisdiction of established states, attention has been turned to the less known polar regions. These

areas have not been clearly defined but different states have made claims to jurisdiction in polar areas on varying grounds. The areas about the north and about the south pole are not identic in their characteristics. The economic and strategic importance of the areas also differ. Some areas are of value for strategic reasons; in some there are deposits of minerals; fishing and hunting give importance to some areas; and proximity and other reasons give grounds to other claimants of jurisdiction.

The value of scientific data obtainable in the polar regions has also been emphasized; particularly the value of meteorological investigations. The flora and fauna as well as the ethnic characteristics of life in the polar regions may offer serviceable data.

The ancient quest for a North-West passage from the Atlantic to the Pacific has lost interest as aircraft have made earlier barriers of little importance, and many polar air routes have been surveyed.

In recent years the polar regions, north and south, have received more attention. The spirit of discovery as far as the surface of the earth is concerned has been largely confined to these areas. Discovery of the geographical north or south pole has lured explorers. Economic resources have also called for investigation. That there were fish and whales in the polar waters has long been known and the fisheries have proven valuable. The long sought North-West passage may now be by air and the time required may be insignificant as compared with that contemplated by early explorers. The controversies over Wrangel Island or Herald

Island, and over the territories of Greenland claimed by Denmark and Norway before the Permanent Court of International Justice in 1932 and 1933 have attracted relatively little attention.

While the Arctic ice seems to be for the most part mobile at least for some season of the year, some of the Antarctic ice seems to be relatively stationary. Scientific investigation may determine to what extent the ice rests upon the land surface and to what extent it is below low-water mark. If the seaward limits do not change, it would seem that a measure of jurisdiction over permanent ice should be in the adjacent land sovereignty.

Objectives in polar explorations.—Probably it would be found that the broadening of the knowledge of the polar regions has been due to many stimuli. The spirit of adventure into unknown regions has often been evident both in early and late expeditions. The lure of a North West or North East passage from the Atlantic to the Pacific was always present in the minds of some, even before aircraft removed many difficulties. The exploitation of the polar resources, whaling, sealing, fishing, etc., and recently mining, has attracted a different type of expedition. Scientific knowledge has been the aim of some explorers. The discovery of the poles has been sought by some. The extension of state authority has naturally been a motive prompting to direct or indirect state aid. Often the objectives have been mixed and, as stated, sometimes misleading.

Fauchille on polar domain.—The late Paul Fauchille gave much attention to the doctrine of sovereignty over polar areas and reviewed the various

theories which had been advanced. He said in the eighth edition of Bonfils, published in 1925:

Étant des territoires, les régions polaires sont susceptibles d'appropriation. Mais, étant des territoires *glacés*, elles ne sont pas véritablement habitables; elles son seulement exploitables: les hommes ne sauraient y vivre comme sur les autres territoires pour une durée de temps indéfinie, ils ne peuvent y demeurer que d'une manière temporaire; c'est en conséquence un personnel constamment renouvelé qu'il faudra y entretenir. Il suit de là que l'appropriation dont elles sont susceptibles doit nécessairement présenter un caractère particulier. Il ne peut pas s'agir dans de pareilles régions d'une occupation proprement dite, et il ne saurait être question d'y instituer *sur place* un gouvernement et une administration avec tous les rouages que ceux-ci impliquent d'ordinaire (comp. n°. 554). L'occupation que les pôles autorisent est une *occupation d'exploitation*, non pas une *occupation d'habitation.* Cella-là est pour les régions polaires la seule qui soit admissible. Mais il faut qu'elle existe. Ici, comme en ce qui concerne tout autre domaine sans maître, le simple fait de la découverte est inopérant pour produire un droit définitif: il prépare l'appropriation, mais il ne la crée pas. Rebelles à toute idée d'un séjour indéfini, et necessitant un personnel constamment changeant, les régions glacées sont par là même incompatibles, de leur nature, avec celle d'une souveraineté individuelle exclusive. Ce n'est pas à un seul État, c'est à tous les États qu'il faut reconnaître le droit de les exploiter. C'est en définitive d'une sorte de condominium plural qu'elles doivent entre l'objet: elles doivent devenir une possession commune de tous les membres de la famille des nations." (Droit International Public, Tome 1, 2me Partie, § 531 [39], p. 658.)

Opinion of Professor Hyde.—Professor Hyde in 1934 in an article entitled "Acquisition of Sovereignty over Polar Area" takes into account the Sector system and its consequences. He concludes that—

"If, on account of the rigour of climatic conditions in the polar regions, there is to be a relaxation of the requirements

of the law demanding occupation as the mode of acquiring a right of sovereignty over newly found lands, it should be kept within rigid bounds, and never regarded as applicable to kindred efforts in the temperate zones. The relaxation should be confined to the waiving of settlement as a necessary condition for the perfecting of a right of sovereignty, provided a claimant state may establish that by some other process it is in a position to exercise control over what it claims as its own. This requirement should be applied in all polar regions. In those of the Arctic, it might, however, be recognized that the sovereign of contiguous territory projecting itself into the Arctic Circle was, by reason of that fact, in a position to exercise requisite control over an extensive area, or at least in a position to make proof of the fact. Yet in such case, the doctrine of contiguity should not be permitted to supplant the need of proof, as by acknowledging the possession of a power of control when none was found to exist. In the Antarctic regions no assumption of the requisite power should be deemed to suffice to beget a right of sovereignty, or be accepted as a substitute of proof of the requisite power to control." (29 Iowa Law Review, January 1934, p. 294.)

Russian rules, 1821.—A Russian edict of 4/16 September 1821, published "for the information of all men,"

"Rules established for the limits of Navigation and order of Communication, along the Cost of the Eastern Siberia, the North-western Coast of America, and the Aleutian, Kurile, and other Islands

"SECT. 1. The pursuits of commerce, whaling, and fishery, and of all other industry, on all Islands, Ports, and Gulfs, including the whole of the North-west Coast of America, beginning from Behring's Straits, to the 51° of Northern Latitude, also from the Aleutian Islands to the Eastern Coast of Siberia, as well as along the Kurile Islands from Behring's Straits to the South Cape of the Island of Urup, viz: to the 45° 50′ Northern Latitude, is exclusively granted to Russian Subjects.

"II. It is therefore prohibited to all Foreign Vessels, not only to land on the Coast and Islands belonging to Russia, as stated above, but also to approach them within less than 100 Italian miles. The Transgressor's Vessel is subject to confiscation, along with the whole cargo." (9 Br. & For. State Papers, 1822, p. 473.)

Exceptions were provided for vessels in distress and detailed regulations for other vessels.

In acknowledging the receipt of the Rules, the Secretary of State of the United States said:

"I am directed by the President of The United States to inform you, that he has seen with surprise in this Edict the assertion of a Territorial Claim on the part of Russia, extending to the 51st degree of North Latitude on this Continent; and a Regulation interdicting to all Commercial Vessels, other than Russian, upon the penalty of seizure and confiscation, the approach, upon the High Seas, within 100 Italian miles of the shores to which that Claim is made to apply. The relations of The United States with His Imperial Majesty have always been of the most friendly character; and it is the earnest desire of this Government to preserve them in that state. It was expected, before any Act which should define the Boundary between the Territories of The United States and Russia, on this Continent, that the same would have been arranged, by Treaty, between the Parties. To exclude the Vessels of our Citizens, from the shore, beyond the ordinary distance to which the Territorial Jurisdiction extends, has excited still greater surprise.

"This Ordinance affects so deeply the Rights of The United States and of their Citizens, that I am instructed to inquire, whether you are authorized to give explanations of the grounds of Right, upon principles generally recognized by the Laws and Usages of Nations, which can warrant the Claims and Regulations contained in it." (*Ibid.*, p. 483.)

The Russian Minister in a long reply, after relating the historical events leading to Russian claims, said of these claims that, they—

"rest upon three bases required by the general Law of Nations and immemorial usages among Nations; that is, upon

the title of first discovery; upon the title of first occupation; and, in the last place, upon that which results from a peaceful and uncontested possession of more than half a century; an epoch, consequently, several years anterior to that when the United States took their place among Independent Nations.

"It is moreover evident, that, if the right of the possession of a certain extent of the North-west Coast of America, claimed by The United States, only devolves upon them in virtue of the Treaty of Washington, of the 22d of February, 1819, and I believe it would be difficult to make good any other title, this Treaty could not confer upon the American Government any right of claim against the Limits assigned to the Russian Possessions upon the same Coast, because Spain herself had never pretended to a similar right.

"The Imperial Government, in assigning for Limits to the Russian Possession on the North-West Coast of America, on the one side Behring's Strait, and, on the other, the 51st degree of North Latitude, has only made a moderate use of an incontestible right; since the Russian Navigators, who were the first to explore that part of the American Continent, in 1741, pushed their discovery as far as the 49th degree of North Latitude. The 51st degree, therefore, is no more than a mean Point between the Russian Establishment of New Archangel, situated under the 57th degree, and the American Colony at the mouth of the Columbia, which is found under the 46th degree of the same Latitude." (*Ibid.*, p. 485.)

The Minister, after alluding to the need of 100 miles protective jurisdiction, also said,

"I ought, in the last place, to request you to consider, Sir, that the Russian Possessions in the Pacifick Ocean extend, on the North-west Coast of America, from Behring's Strait to the 51st degree of North Latitude, and, on the opposite side of Asia, and the Islands adjacent, from the same Strait to the 45th degree. The extent of Sea of which these Possessions form the limits, comprehends all the conditions which are ordinarily attached to *shut seas* (Mers fermées), and the Russian Government might consequently judge itself authorized to exercise upon this Sea, the right of Sover-

eignty, and especially that of entirely interdicting the entrance of Foreigners. But it preferred only asserting its essential rights, without taking any advantage of localities." (*Ibid.*, p. 487.)

The Arctic and the United States.—American explorers found the Arctic an alluring area after the middle of the nineteenth century and made many valuable contributions to the knowledge of the Arctic, but even the discovery of the North Pole, though giving arise to much discussion, did not contribute to the territorial extension of the United States.

By the Convention between the United States and Russia concluded April 17, 1824, relative to fishing and trading, the regulations in regard to subjects of each state were entrusted to each state in the Pacific Northwest area to 54 degrees 40 minutes North latitude. The Treaty of 1832 between these Powers extended the privileges of mutual commercial intercourse and introduced the most-favored nation treatment, except as in special agreements between Russia and Prussia, and Russia and Sweden and Norway.

By the Convention of March 30, 1867, between the United States and Russia, the Emperor ceded to the United States—

"all the territory and dominion now possessed by his said Majesty on the continent of America and in the adjacent islands, the same being contained within the geographical limits herein set forth, to wit: The eastern limit is the line of demarcation between the Russian and the British possessions in North America, as established by the convention between Russia and Great Britain, of February 28–16, 1825, and described in Articles III and IV of said convention, in the following terms:

" 'Commencing from the southernmost point of the island called Prince of Wales Island, which point lies in the par-

allel of 54 degrees 40 minutes north latitude, and between the 131st and 133d degree of west longitude, (meridian of greenwich,) the said line shall ascend to the north along the channel called Portland channel, as far as the point of the continent where it strikes the 56th degree of north latitude; from this last mentioned point, the line of demarcation shall follow the summit of the mountains situated parallel to the coast as far as the point of intersection of the 141st degree of west longitude, (of the same meridian;) and finally, from the said point of intersection, the said meridian line of the 141st degree, in its prolongation as far as the Frozen ocean.

" 'IV. With reference to the line of demarcation laid down in the preceding article, it is understood—

" '1st. That the island called Prince of Wales Island shall belong wholly to Russia.' (now, by this cession, to the United States.)

" '2d. That whenever the summit of the mountains which extend in a direction parallel to the coast from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude shall prove to be at the distance of more than ten marine leagues from the ocean, the limit between the British possession and the line of coast which is to belong to Russia as above mentioned (that is to say, the limit to the possessions ceded by this convention) shall be formed by a line parallel to the winding of the coast, and which shall never exceed the distance of ten marine leagues therefrom.'

"The western limit within which the territories and dominion conveyed, are contained, passes through a point in Behring's straits on the parallel of sixty-five degrees thirty minutes north latitude, at its intersection by the meridian which passes midway between the islands of Krusenstern, or Ignalook, and the island of Ratmanoff, or Noonarbook, and proceeds due north, without limitation, into the same Frozen Ocean. The same western limit, beginning at the same initial point, proceeds thence in a course nearly southwest, through Behring's straits and Behring's sea, so as to pass midway between the northwest point of the island of St. Lawrence and the southeast point of Cape Choukotski, to the meridian

of one hundred and seventy-two west longitude; thence, from the intersection of that meridian, in a southwesterly direction, so as to pass midway between the island of Attou and the Copper island of the Kormandorsni couplet or group, in the North Pacific ocean, to the meridian of one hundred and ninety-three degrees west longitude, so as to include in the territory conveyed the whole of the Aleutian islands east of that meridian." (15 Stat. 539.)

This convention conferred upon the United States only those rights which Russia then possessed in the area described.

In 1920 the United States participated in a conference at Paris which in a multilateral treaty (signed, February 9, 1920, in force, August 14, 1925) determined the status of the Archipelago of Spitzbergen, including Bear Island, with view to assuring "their development and peaceful utilisation." Under this treaty, by Article I —

"The High Contracting Parties undertake to recognise, subject to the stipulations of the present Treaty, the full and absolute sovereignty of Norway over the Archipelago of Spitsbergen, comprising, with Bear Island or Beeren-Eiland, all the island situated between 10° and 35° longitude East of Greenwich and between 74° and 81° latitude North, especially West Spitsbergen, North-East Land, Barents Island, Edge Island, Wiche Islands, Hope Island or Hopen-Eiland, and Prince Charles Foreland, together with all islands great or small and rocks appertaining thereto." (43 Stat. 1892.)

Norway in accepting this treaty agrees to give equality of treatment to nationals of the other Powers. There is in Article IV special provision in regard to radio:

"All public wireless telegraphy stations established or to be established by, or with the authorisation of, the Norwegian Government within the territories referred to in Article 1 shall always be open on a footing of absolute

equality to communications from ships of all flags and from nationals of High Contracting Parties, under the conditions laid down in the Wireless Telegraphy Convention of July 5, 1912, or in the subsequent International Convention which may be concluded to replace it.

"Subject to international obligations arising out of a state of war, owners of landed property shall always be at liberty to establish and use for their own purposes wireless telegraphy installations, which shall be free to communicate on private business with fixed or moving wireless stations, including those on board ships and aircraft." (*Ibid.*)

Alaska and the polar area.—In the convention between Great Britain and Russia of February 18/16, 1825, the boundary line between Russia and British possessions in America on the continental mainland was to follow northward 56 degrees North latitude from the summit of the coast mountains to the point of intersection of the 141st degree of West longitude and from the point of intersection was to follow this meridian "in its prolongation as far as the Frozen Ocean." The English version was a translation of the French "dans son prolongement jusqu'à la Mer Glaciale."

The convention concluded March 30, 1867, between the United States and Russia by which the Russian title in the North West passed to the United States, being in French and English, concontained the same clause. In Article I of this convention, the western line of boundary in "Behring's Strait" is fixed at the meridian which passes midway between the islands of Ignalook and Noonarbook "due north, without limitation, into the same Frozen Ocean." Apparently this convention of 1867 between the United States and Russia was referring in its terms to the same area

that had been the subject of negotiation between Great Britain and Russia in 1825.

Interpretation of "jusqu'à."—The significance of the words *"jusqu'à"* as used in defining boundaries has been the subject of dispute. The interpretation of *jusqu'à* was involved in the Advisory Opinion No. 9 of the Permanent Court of International Justice. September 4, 1924, in regard to the Monastery of Saint-Naoum. The paragraphs in which the words occur were as follows:

"1) Les territoires sur lesquels s'étendront les travaux de la Commission ne peuvent rester indéterminés. Ses limites seront, à l'ouest, les montagnes séparant la région cotière attribuée à l'Albanie jusqu'à Phtélia, de la vallée d'Argyrocastro. Au nord-est, la ligne frontière de l'ancien caza ottoman de Koritza; entre ces deux régions, la ligne indiquée dans le mémorandum présenté par M. Venizelos à la réunion formera la limite septentrionale des travaux de la Commission, tandis qu'au sud et sud-est ceux-ci s'étendront jusqu'à la ligne proposée par l'Autriche-Hongrie.

"2) Il est dès à présent établi que la région cotière jusqu'à Phtélia, y compris l'île de Sasseno, la région située au nord de la ligne grecque, ainsi que l'ancien caza ottoman de Koritza, avec la rive ouest et sud du lac d'Ochrida, s'étendant du village de Lin jusqu'au monastère de Sveti-Naoum, feront intégralement partie de l'Albanie." (Publications, Permanent Court of International Justice, Ser. B, No. 9, p. 18.)

These paragraphs translated into English read,

"(1) The territories over which the Commissioner's work will extend cannot be left undetermined. Their limits will be, on the west, the mountains separating the coastal region attributed to Albania as far as Phthelia, from the valley of Argyrocastro. On the north-east, the boundary of the former Ottoman Casa of Koritza; between these two regions, the line indicated in the memorandum submitted by M. Venizelos to the meeting will form the northern limit of the

Commission's work; while to the south and south-east it will extend as far as the line proposed by Austria-Hungary.

"(2) It is hereby decided that the whole of (*intégralement*) the coastal region as far as Phthelia, including the island of Sasseno, the region to the north of the Greek line and the former Ottoman Casa of Koritza, together with the western and southern shore of Lake Ochrida from the village of Lin as far as the Monastery of Sveti-Naoum shall form part of Albania." (*Ibid.*)

Of these paragraphs the opinion says,

"As regards the frontier which the Commission had to settle in this district, the London decision of August 11th, 1913, in its second paragraph fixes it when it determines which districts shall 'henceforth' form an integral part of Albania and gives their limits. It follows that the reference, contained in the first paragraph of the decision of August 11th, to the Austro-Hungarian line has not necessarily the meaning which Serbia desires to give it. The frontier at Saint-Naoum, far from having been fixed in favour of the latter country, had indeed remained undetermined, as the Ambassadors' Conference thought. In fact, as regards determining it, the second paragraph of the decision of August 11th seems to give no further guidance than the single expression: *jusqu'à*. As regards that expression the following is to be observed:

"One possible interpretation of the expression *jusqu'à* is that Saint-Naoum is included in Albania; another that it is excluded from that country. The Court considers it impossible to affirm which of these interpretations should be accepted. Numerous instances have been cited of the use of this expression (*jusqu'à*) both in an inclusive and in an exclusive sense. The Court does not think it possible to affirm that the meaning of this word in connection with a place like the Monastery of Saint-Naoum necessarily implies either its inclusion or exclusion. It should, however, be observed that in the same paragraph, side by side with the expression *jusqu'à Saint-Naoum*, is to be found the expression: *jusqu'à Phthelia* which is shown by the facts of the case to mean: 'Phthelia inclusive.'" (*Ibid.*, p. 20.)

Fur seals.—Toward the end of the nineteenth century, the fur seal conservation in the Bering Sea and the North Pacific Ocean became a matter of negotiation between the United States and Russia. After the exchange of many notes, a *modus vivendi* was concluded on May 4, 1894. Provision was made for establishing "zones outside the territorial waters of Russia." The paragraphs relating to the zones were as follows:

"1. The Government of the United States will prohibit citizens of the United States from hunting for fur-seal within a zone of ten nautical miles along the Russian coasts of Behring Sea, and of the North Pacific Ocean, as well as within a zone of thirty nautical miles around the Komandorsky (Commander) Islands and Tulienew (Robben) Island, and will promptly use its best efforts to ensure the observance of this prohibition by citizens and vessels of the United States.

"2. Vessels of the United States engaged in hunting fur-seal in the above-mentioned zones outside of the territorial waters of Russia may be seized and detained by the naval or other duly commissioned officers of Russia; but they shall be handed over as soon as practicable to the naval or other commissioned officers of the United States or to the nearest authorities thereof. In case of impediment or difficulty in so doing, the commander of the Russian cruiser may confine his action to seizing the ship's papers of the offending vessels in order to deliver them to a naval or other commissioned officer of the United States, or to communicate them to the nearest authorities of the United States as soon as possible.

"3. The Government of the United States agrees to cause to be tried by the ordinary courts, with all due guarantees of defense, such vessels of the United States as may be seized, or the ship's papers of which may be taken, as herein prescribed, by reason of their engaging in the hunting of fur-seal within the prohibited zones outside of the territorial waters of Russia aforesaid." (28 Stat. 1202.)

Hinterland doctrine.—Claims to polar areas have brought forward the "hinterland doctrine" in a sort of reverse direction from the coast line outward rather than from the coast line inland as in the nineteenth century claims in Africa. Secretary of State Olney in a note to the British Ambassador said of this:

"It can not be irrelevant to remark that 'spheres of influence' and the theory or practice of the 'Hinterland' idea are things unknown to international law and do not as yet rest upon any recognized principles of either international or municipal law. They are new departures which certain great European powers have found necessary and convenient in the course of their division among themselves of great tracts of the continent of Africa, and which find their sanction solely in their reciprocal stipulations. 'Such agreements,' declares a modern English writer on international law, 'remove the causes of present disputes; but, if they are to stand the test of time, by what right will they stand? We hear much of a certain 'Hinterland' doctrine. The accepted rule as to the area of territory affected by an act of occupation in a land of large extent has been that the crest of the watershed is the presumptive interior limit, while the flank boundaries are the limits of the land watered by the rivers debouching at the point of coast occupied. The extent of territory claimed in respect of an occupation on the coast has hitherto borne some reasonable ratio to the character of the occupation. But where is the limit to the 'Hinterland' doctrine? Either these international arrangements can avail as between the parties only and constitute no bar against the action of any intruding stranger, or might indeed is right.' Without adopting this criticism, and whether the 'spheres of influence' and the 'Hinterland' doctrines be or be not intrinsically sound and just, there can be no pretense that they apply to the American continents or to any boundary disputes that now exist there or may hereafter arise. Nor is it to be admitted that, so far as territorial disputes are likely to arise between Great Britain and the United States, the accepted principles of international law

are not adequate to their intelligent and just consideration and decision. For example, unless the treaties looking to the harmonious partition of Africa have worked some change, the occupation which is sufficient to give a state title to territory cannot be considered as undetermined. It must be open, exclusive, adverse, continuous, and under claim of right. It need not be actual in the sense of involving the possessio pedis over the whole area claimed. The only possession required is such as is reasonable under all the circumstances—in view of the extent of territory claimed, its nature, and the uses to which it is adapted and is put—while mere constructive occupation is kept within bounds by the doctrine of contiguity.

"It seems to be thought that the international law governing territorial acquisition by a state through occupation is fatally defective because there is no fixed time during which occupation must continue. But it is obvious that there can be no such arbitrary time limit except through the consensus, agreement, or uniform usage of civilized states." (Foreign Relations, U. S., 1896, p. 235.)

Russian customs waters, 1910.—In 1910 the Russian authorities raised question as to whether Great Britain had protested the claim of the United States to a twelve mile maritime custom's jurisdiction. The United States replied in the negative. In 1909 Russia had adopted a law "whereby the area of supervision by the Russian customs authorities is extended to twelve marine miles from low-water mark." (Foreign Relations, U. S., 1912, p. 1288.) At the same time it was reported that a British steamer—

"the *Onward* was seized on the charge of fishing within Russian territorial waters; but she was voluntarily released by the Russian Government upon its appearing that when arrested she was, though perhaps within twelve miles of a line from headland to headland of the White Sea, at a distance of more than twelve miles from the shore. The case is there-

fore of no significance as indicating the intention of the Russian Government to insist upon the extension of its territorial control over the marginal seas, whether for customs purposes only, or for other jurisdictional purposes." (*Ibid.*)

The British and Japanese Governments protested an extension of Russian maritime jurisdiction.

Russia on maritime jurisdiction, 1912.—Questions arose upon the jurisdiction of states beyond the three-mile limit in several states in 1912.

Russia had interpreted its law in regard to customs regulations on December 10/23, 1909, as follows:

"The surface of the water for twelve marine miles from extreme low-water mark from the seacoasts of the Russian Empire, whether mainland or islands, is recognized as the Marine Customs area, within the limits of which every vessel, whether Russian or foreign, is subject to supervision by those Russian authorities in whose charge is the guarding of the frontiers of the Empire." (Foreign Relations, U. S., 1912, p. 1289.)

This interpretation of rights over the marginal sea was reaffirmed in subsequent Russian legislation and proposals were made to extend the application of the act to fisheries and other maritime undertakings as well as to close certain sea areas off the Russian coast.

The arguments that the range of cannon had increased, that there was a scarcity of fish, etc., were advanced in support of the claim for extension of jurisdiction.

Rules were proclaimed by Russia in 1911 for fishing under the Russo-Japanese Convention of 1907. In these regulations it was stated:

"Where the extent of the seashore radius is not defined by special international enactments or treaties, the present rules

cover the coastal sea to a distance of three geographical miles (=12.02 marine miles=20.87 versts), counting from the line of the lowest ebb-tide, or from the extremity of the coastal standing ice.

"The present rules do not cover the Amur estuary from a line connecting Cape Lazareff on the mainland to Cape Pogobi on the island of Saghalin, to a line connecting Cape Perovskiy on the mainland with the northern tributaries to the Baikal Gulf on the island of Saghalin." (*Ibid.*, p. 1303.)

The American Ambassador (Guild) reviewed the situation in a note to the Secretary of State, February 3, 1912, saying that while the whole matter was "most complicated and confusing," the understanding seemed to be that—

"Russia proposes ultimately to extend her control in every way to a distance of twelve miles from all her coasts bordering on the ocean. This has not yet been fully accomplished, but only in part. The question naturally groups itself into three divisions:

"1. The exercise of customs authority to a distance of twelve miles from all her coasts on the open sea.

"This law was approved by the Emperor December 10/23, 1909, promulgated January 1/14, 1910, and is now in force. As yet, so far as can be ascertained, no case calling for special international protest has occurred under it.

"2. The extension of Russian jurisdiction over all open-sea fisheries on the Pacific coasts within twelve miles of the lands of the Russian Empire.

"This law was passed May 29/June 11, 1911, and went into force December 25/January 7, last.

"3. The law extending jurisdiction over fisheries conducted in the White Sea and within twelve miles of the Archangel Government was reported favorably by the Committee to the Duma last June, but has not yet been passed. It lies on the table and it is reported that English influence is responsible for the delay in its passage.

"England has formally protested against all three of these laws in particular and against the attitude of Russia in general in regard to the extension of jurisdiction from three

miles to twelve. Not being, however, specially interested in the Pacific Coast fisheries, England has confined vigorous action to the Archangel and White Sea fisheries, where her interests are large. England hopes to be able to get this proposed law postponed long enough to permit the matter to be presented before the next Hague Conference in 1915. The President of the Duma has assured the British Ambassador that the project can not be reached by the present Duma, and M. Sazonov practically admitted the same thing to me.

"Japan also has protested in general against the whole proposition of extension of jurisdiction to twelve miles from shore in the open sea, but she has confined her vigorous action to the fisheries in the Pacific, where her direct interests are enormous. The annual Japanese catch of fish in what are now claimed to be Russian waters is valued in gross by the Japanese Embassy at 80,000,000 roubles.

"Japan contends that the section of these laws dealing with Pacific fisheries is not only in violation of international law, but is also a violation of the spirit of the existing Russo-Japanese Fishery Agreement." (*Ibid*, p. 1304.)

Soviet decree, 1926.—On April 15, 1926—

"The Presidium of the Central Executive Committee of the Union of Soviet Socialist Republics decrees:—

"All discovered lands and islands, as well as all those that may in the future be discovered, which are not at the date of the publication of this decree recognised by the Government of the U. S. S. R. as the territory of a foreign Power, are declared to be territories belonging to the U. S. S. R., within the following limits:

"In the Northern Arctic Ocean, from the northern coast of the U. S. S. R. up to the North Pole, between the meridian 32°4′35″ east longitude from Greenwich, passing along the eastern side of Vaida Bay through the triangulation mark on Kekursk Cape, and meridian 168°49′30″ west longitude from Greenwich, passing through the middle of the strait which separates Ratmanov and Kruzenstern Islands of the Diomede group of islands in the Behring Straits." (125 Br. & For. State Papers, 1926, Pt. II, p. 1064.)

British Soviet temporary agreement, 1930.—The limits for fisheries was partially outlined in a temporary agreement, May 22, 1930:

"The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics, being mutually desirous to conclude as soon as possible a formal convention for the regulation of the fisheries in waters contiguous to the northern coasts of the territory of the Union of Soviet Socialist Republics, have meanwhile decided to conclude the following temporary agreement to serve as a *modus vivendi* pending the conclusion of a formal convention:—

"ART. 1.—(1) The Government of the Union of Soviet Socialist Republics agree that fishing boats registered at the ports of the United Kingdom may fish at a distance of from 3 to 12 geographical miles from low water mark along the northern coasts of the Union of Soviet Socialist Republics and the islands dependent thereon, and will permit such boats to navigate and anchor in all waters contiguous to the northern coasts of the Union of Soviet Socialist Republics.

"(2) As regards bays, the distance of 3 miles shall be measured from a straight line drawn across the bay in the part nearest entrance, at the first point where the width does not exceed 10 miles.

"(3) As regards the White Sea, fishing operations by fishing boats registered at the ports of the United Kingdom may be carried on to the north of latitude 68°10′ north, outside a distance of 3 miles from the land.

"(4) The waters to which this temporary agreement applies shall be those lying between the meridians of 32° and 48° of east longitude.

"2. Nothing in this temporary agreement shall be deemed to prejudice the views held by either contracting Government as to the limits in international law of territorial waters.

"3. The present temporary agreement comes into force on this day and shall remain in force until the conclusion and coming into force of a formal convention for the regulation of the fisheries in waters contiguous to the northern coasts of the territory of the Union of Soviet Socialist Republics,

subject, however, to the right of either contracting Government at any time to give notice to the other to terminate this agreement, which shall then remain in force until the expiration of 6 months from the date on which such notice is given." (132 Br. & For. State Papers, 1930, Pt. 1, p. 332.)

Lakhtine's statement of U. S. S. R. attitude, 1930.—After the World War there was a growing interest in the Polar regions. The Arctic from its nearness to the areas that had been concerned in the war became of particular interest, and expeditions were fitted out in various countries which increased the knowledge of the Arctic area.

Lakhtine, the Secretary-Member of the Committee of Direction of the Section of Aerial Law of the Union of Societies "Ossoaviachim" of U. S. S. R., would be expected to represent the Soviet point of view at the time when he was writing in 1930. In a general statement he said:

"Within, or rather to the north of, the Arctic Circle there lie still open to claims of jurisdiction: (1) discovered lands and islands, (2) undiscovered lands and islands, (3) ice formations, (4) sea regions, (5) air regions. Each of these categories has a legal status in international law as possible objects of the right of possession and jurisdiction." (24 A. J. I. L. [1930], p. 704.)

Lakhtine states that the rigors of Arctic climate and other physical conditions make the usual requirements for acquisition difficult in the Arctic regions. These have been discovery and continued occupation and, more recently, notification. He finds that hitherto the political and economic motives for occupation and annexation have not been strong and says that—

"Inasmuch, therefore, as the economic possibilities were confined to a relatively narrow maritime belt, sovereignty over the lands and islands of the Arctic Ocean has been,

hitherto, exercised by the adjacent littoral states without the required formalities of effective occupation.

"As a consequence, the legal principle of 'occupation' as applied to the Arctic and Antarctic has been rendered inapplicable. It has also become evident that in Polar regions 'effective occupation' cannot be realized, and a substitute principle that sovereignty ought to attach to littoral states according to 'region of attraction' is now suggested and practically applied. In support of this principle several illustrations can be given of the practices of States in the region of the Antarctic. For instance, England, and then France, acquired sovereignty over islands and areas of land within the Antarctic Circle; England chiefly basing her claim upon possession of the Falkland Islands, and France, here, upon possession of Madagascar. Neither England nor France were in the least disconcerted by the fact that the areas annexed in this manner had not been effectively occupied, and that neither had made settlements. These facts did not prevent them from acquiring control over the whole of the hunting, seal fisheries, etc., in the waters adjacent to these possessions, and in some places wholly to prohibit them to foreigners.

"Let us revert to the consideration of the present legal status of lands and islands lying within the Polar circles. It will be clearer perhaps for the moment to refer to the section of 'regions of attraction' of contiguous northern States." (*Ibid.*)

The statements in regard to the degree of control acquired by England and France may be open to question. Analogies drawn from the Antarctic would not necessarily be applicable to the Arctic.

Lakhtine describes what he considers are the "regions of attraction" in the north polar region and reviews to some extent the discussions in regard to the Canadian claims, concluding that "it is obvious that 'effective occupation' is realized by the activity of the U. S. S. R. no less, if not even more completely, than, for example, Canada in the case of

her Polar lands in the same latitude." (*Ibid.*, p. 707.)

Lakhtine also bases title upon notes such as that of September 20, 1916, and the decree of April 15, 1926:

"The Presidium of the Central Executive Committee of the Union of Soviet Socialist Republics decrees:—

"All discovered lands and islands, as well as all those that may in the future be discovered, which are not at the date of the publication of this decree recognised by the Government of the U. S. S. R. as the territory of a foreign Power, are declared to be territories belonging to the U. S. S. R., within the following limits:

"In the Northern Arctic Ocean, from the northern coast of the U. S. S. R. up to the North Pole, between the meridian 32°4′35″ east longitude from Greenwich, passing along the eastern side of Vaida Bay through the triangulation mark on Kekursk Cape, and meridian 168°49′30″ west longitude from Greenwich, passing through the middle of the strait which separates Ratmanov and Kruzenstern Islands of the Diomede group of islands in the Behring Straits." (124 Br. & For. State Papers, p. 1064.)

From the notes and decrees Lakhtine states:

"Therefore, at present, the rights of the U. S. S. R. over the lands and islands, situated within the sector mentioned in the decree, are strictly based and precisely defined." (24 A. J. I. L. [1930], p. 709.)

He cited Fauchille, who reviewing the climatic conditions and difficulties of occupation, said,

"Il suit de là que l'appropriation dont elles sont susceptibles doit nécessairement présenter un caractère particulier. Il ne peut pas s'agir dans de pareilles régions d'une occupation proprement dite, et il ne saurait être question d'y instituer *sur place* un gouvernement et une administration avec tous les rouages que ceux-ci impliquent d'ordinaire. L'occupation que les pôles autorisent est une *occupation d'exploitation*, non pas une *occupation d'habitation*. Celle-là est pour les régions polaires la seule qui soit admissible. Mais il faut

qu'elle existe. Ici, comme en ce qui concerne tout autre domaine sans maître, le simple fait de la découverte est inopérant pour produire un droit définitif: il prêpare l'appropriation, mais il ne la crée pas." (Traité de droit international public, t. I, Pt. 2, p. 658.)

After further discussion Lakhtine sums up the position of the U. S. S. R. on undiscovered lands and islands as follows:

"The question, then, of the legal status of the undiscovered Arctic territories may be regarded as solved not only as a theory but by positive law. That is to say, *the said lands and islands being still undiscovered are already presumed to belong to the national territory of the adjacent Polar State in the sector of the region of attraction in which they are to be found.*" (24 A. J. I. L. [1930], p. 711.)

As to ice formations, he says:

"It must be remembered that some of the immovable ice fields are utilized for land communication, and that it is possible to establish there intermediate aerial stations, etc. We are of the opinion that *floating ice should be assimilated legally to open polar seas, whilst ice formations that are more or less immovable should enjoy a legal status equivalent to polar territory.* Polar States acquire sovereignty over them within the limits of their sectors of attraction." (*Ibid.*, p. 712.)

Referring to the sea regions, Lakhtine affirms, after considering what he regards as practice in the Arctic:

"Thus the proposed legal status for the high seas of the Arctic, is, in its essential part, nearly identical with that of 'territorial waters.'

"Summing up we reach the following conclusions:

"1. Polar States wield sovereignty over sea regions covered with ice, according to their sectors of attraction.

"2. Littoral States wield sovereignty over land-locked seas free from ice, and over gulfs and bays.

"3. Littoral States are entitled to a somewhat limited sovereignty over all remaining sea regions free from ice, as well

as over territorial waters, maritime belts and waters between islands according to their sectors of attraction." (*Ibid.*, p. 714.)

The air regions naturally receive attention at this time and Lakhtine after the preceding conclusions, says:

"The problem yet remaining to be solved is that of the right of Polar states to sovereignty over the aerial space above the remaining water area of the Arctic Ocean, free from ice, *i. e.*, the high sea.

"Inasmuch as the legal status of these water areas is closely assimilated to that of territorial waters over which a state does exercise a limited sovereignty; and since, according to the international law of today a littoral State exercises unlimited jurisdiction over the atmosphere above its territorial waters, there is no reason for treating the question of the legal status of these Arctic air regions in a different manner.

"This argument is strengthened when we realize the impossibility of using airships for economic purposes exclusively in this part of Arctic aerial space. If an airship should be used for operations connected with fishing and hunting in these open waters, it would be as necessary to obtain the permission of the littoral State as it would be to obtain permission for fishing and hunting from vessels. Moreover, it is impossible to use the air for aerial communication without crossing ice regions, territorial waters and territories belonging to a State which exercises sovereignty over the atmosphere above.

"Hence we conclude that *each Polar State exercises sovereignty over the aerial space above the whole region of attraction of its sector.* Mr. L. L. Breitfus supports this opinion. Writing in 1928 he says: 'Within each of these sectors, an adjacent State exercises its sovereignty over discovered as well as over undiscovered lands and islands, this sovereignty being exercised not only over land, but also to a certain extent (yet to be precisely fixed internationally) over seas covered with ice, surrounding these lands and islands and as well over air regions above this sector.'" (*Ibid.*, p. 714.)

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He divides the Arctic area into five sectors and allocates these on treaty and other grounds; then says:

"As to the ownership of the North Pole, it should be remarked that the Pole is an intersection of meridian lines of the said five sectors. Neither legally, nor in fact does it belong to anyone. It might be represented as an hexahedral frontier post on the sides of which might be painted the national colors of the state of the corresponding sector." (*Ibid.*, p. 717.)

Bering Sea Award, 1893.—In the treaty of Washington, 1892, agreeing to the arbitration of the jurisdictional rights of the United States over the waters of the Bering Sea and the preservation of the "fur seals in or habitually resorting to said waters," there were five questions proposed. The first question was:

"What exclusive jurisdiction in the sea now known as the Bering's Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?" (27 Stat. 947, 949.)

Six of the seven arbitrators decided as to this point:

"By the Ukase of 1821 Russia claimed jurisdiction in the sea now known as the Bering's Sea, to the extent of 100 Italian miles from the coasts and islands belonging to her, but, in the course of the negociations which led to the conclusion of the Treaties of 1824 with the United States and of 1825 with Great Britain, Russia admitted that her jurisdiction in the said sea should be restricted to the reach of cannon shot from shore, and it appears that, from that time up to the time of the cession of Alaska to the United States, Russia never asserted in fact or exercised any exclusive jurisdiction in Bering's Sea, or any exclusive rights in the seal fisheries therein beyond the ordinary limit of territorial waters." (I Fur Seal Arbitration. Proceedings of the Tribunal of Arbitration, p. 77.)

Width of territorial waters.—There was an informal expression of opinion upon the width of territorial waters at the Conference for the Codification of International Law, The Hague, 1930. Of thirty-three declarations, sixteen favored three miles, ten favored four miles, and seven favored six miles. M. Egoriew, representing the U. S. S. R. said, after these opinions had been given:

"If one takes into consideration the state of positive law at the present time, as it can be discovered in the legislation of the different States through treaties and diplomatic correspondence, it is necessary to recognise the great diversity of view which exists regarding the extent in which the exercise of the rights of the Coastal State exists in the waters called territorial and adjacent. The exercise of such rights for all purposes or for certain purposes is admitted sometimes within the limit of three, sometimes four, six, ten, or twelve miles.

"The reasons, both historical and theoretical, involved by some States and disputed by others, cannot be put into opposition to these facts and the rule or actual necessity for States to ensure their needs, particularly in waters along the coast which are not used for international navigation. This aspect which has been already noted in the literature on the subject, as well as in debates, in this Commission, cannot be overlooked.

"Under these conditions it would be better to confine oneself to a general statement to the effect that the use of international maritime waterways must under no conditions be interfered with." (24 A. J. I. L., Sup. [1930], p. 257.)

Canadian Arctic.—Since 1576 when Martin Frobisher discovered the bay which bears his name, near to the entrance to Hudson Strait, the British have had an important part in opening the Arctic area North of the American continent. The jurisdiction over the area became a matter of particular discussion after Lieutenant William A. Mentzer of the Engineer Corps, U. S. N., applied to the British

Consul at Philadelphia, February 10, 1874, for a grant of land of about twenty square miles on Cumberland Sound. This led to correspondence between the British Colonial Office and the Governor General of Canada and on April 3, 1874, the Colonial Office wrote to the Governor General of Canada:

"I request that you will communicate these papers confidentially to your ministers for their observation. It seems to me desirable in reference to this and similar questions to be informed whether your government would desire that the territories adjacent to those of the Dominion on the North American continent, which have been taken possession of in the name of this country but not hitherto annexed to any colony, or any of them, should now be formally annexed to the Dominion of Canada.

"Her Majesty's government of course reserve for future consideration the course that should be taken in any such case, but they are disposed to think that it would not be desirable for them to authorize settlement in any unoccupied British territory near Canada unless the Dominion Government and Legislature are prepared to assume the responsibility of exercising such surveillance over it as may be necessary to prevent the occurrence of lawless acts or other abuses incidental to such a condition of things." (Southern Baffin Island. Department of Interior, p. 9.)

There was further correspondence and in 1880 an Imperial Order in Council, without fixing boundaries, tendered to Canada—

"all the British possessions on the North American continent not hitherto annexed to any colony."

The implied responsibilities were gradually assumed by the Canadian Government.

The map of the Department of Interior showing the Canadian Northwest Territories indicates the eastern boundary in the Arctic as starting from the North Pole along the line of longitude 60° to a point midway between Cape Brevoort, northern

Greenland and Cape Union, Ellesmere Island, and then in a southerly direction along the waters separating Greenland and Ellesmere Island. The western boundary follows the line 141° south to the eastern boundary of Alaska at Demarcation Point in the Arctic Ocean. The claim is to a fan-shaped sector north of Canada and extending to the North Pole, in which are many islands.

The boundaries of the Canadian Arctic were indefinite but discoveries by expeditions sent out from time to time increased the known area and the hydrographical, geological, and other knowledge of these areas.

From 1903 a more effective control was planned as was evident in instructions given to the commander-in-charge of an expedition to "Hudson Bay and northward therefore":

"The Government of Canada having decided that the time has arrived when some system of supervision and control should be established over the coast and islands in the northern part of the Dominion, a vessel [the *Neptune*] has been selected and is now being equipped for the purpose of patrolling, exploring, and establishing the authority of the Government of Canada in the waters and islands of Hudson Bay, and the north thereof. * * *

"The knowledge of this far northern portion of Canada is not sufficient to enable definite instructions to be given you as to where a landing should be made, or a police post established; decision in that respect to be left to the Board of Three above mentioned, and wherever it is decided to land you will erect huts and communicate as widely as possible the fact that you are there as representative of the Canadian Government to administer and enforce Canadian laws, and that a patrol vessel will visit the district annually, or more frequently.

"It may happen that no suitable location for a post will be found, in which case you will return with the vessel but you

will understand that it is the desire of the Government that, if at all possible, some spot shall be chosen where a small force representing the authority of the Canadian Government can be stationed and exercise jurisdiction over the surrounding waters and territory.

"It is not the wish of the Government that any harsh or hurried enforcement of the laws of Canada shall be made. Your first duty will be to impress upon the captains of whaling and trading vessels, and the natives, the fact that after considerable notice and warning the laws will be enforced as in other parts of Canada." (*Ibid.*, p. 14.)

Canadian claim, 1924.—When asked in the Canadian House of Commons, April 7, 1924, if other states were claiming sovereignty over islands to the north of Canada, Mr. Stewart replied:

"Of course my honorable friend is aware that international law, in a vague sort of way, creates ownership of unclaimed lands within one hundred miles of any coast, even if possession has not been taken. At least there is a sort of unwritten law in that respect. Of course possession is a very large part of international law as well as any other law." (Canada Debates, House of Commons, 1924, p. 1111.)

On June 10, 1925, when question was again raised in regard to the Arctic islands, Mr. Stewart said:

"Indeed, I made the statement in the House the other evening that we claimed all the territory lying between meridians 60 and 141." (*Ibid.*, 1925, p. 4069.)

On the same date, Mr. Stewart, in reply to a question as to whether the jurisdiction of Canada extended to the North Pole, said, "We claim that we go to it." (*Ibid.*, p. 4084.) Further discussion showed that it was not expected that any nation would claim the North Pole, but would claim land lying polarward from their coasts.

Recognition of Arctic sovereignty.—In 1930 claims to sovereignty were made by Norway and

Great Britain over certain islands in the Arctic and these claims were reciprocally recognized.

"Royal Norwegian Legation
London, August 8, 1930.

"Sir,

"Acting on instructions from my government, I have the honor to request you to be good enough to inform His Majesty's Government in Canada that the Norwegian Government, who do not, as far as they are concerned, claim sovereignty over the Sverdrup Islands, formally recognize the sovereignty of His Britannic Majesty over these islands.

"At the same time, my government is anxious to emphasize that their recognizance of the sovereignty of His Britannic Majesty over these islands is in no way based on any sanction whatever of what is named 'the sector principle.'

I have, &c.

Daniel Steen
(*Chargé d'Affaires, a. i.*).

"Sir,

With reference to my note of today in regard to my government's recognition of the sovereignty of His Britannic Majesty over the Sverdrup Islands, I have the honor, under instructions from my government, to inform you that the said note has been despatched on the assumption on the part of the Norwegian Government that His Britannic Majesty's Government in Canada will declare themselves willing not to interpose any obstacle to Norwegian fishing, hunting or industrial and trading activities in the areas which the recognition comprises.

I have, &c.

Daniel Steen
(*Chargé d'Affaires, a. i.*)."

(27 A. J. I. L. [1933], Sup. p. 93.)

The Government of Canada was unable to grant the fishing and other rights mentioned because these were reserved for the aboriginal population, and the Norwegian government concurred.

In November 1930 the following note and reply was exchanged:

"Oslo, *November 18, 1930.*

"M. le Ministre d'État,

"As your Excellency is doubtless aware, on the 9th May, 1929, the Norwegian Minister in London addressed a note to His Majesty's Principal Secretary of State for Foreign Affairs, announcing that, by a royal decree dated the 8th May, Jan Mayen Island had been placed under Norwegian sovereignty.

"I now have the honor by direction of His Majesty's Secretary of State for Foreign Affairs to inform your Excellency that His Majesty's Government in the United Kingdom have taken note of this decree and formally recognize Norwegian sovereignty over Jan Mayen Island.

"I am instructed to add that, His Majesty's Government not having been informed of the grounds on which Norwegian sovereignty was extended to Jan Mayen Island, their recognition of that sovereignty is accorded independently of and with all due reserves in regard to the actual grounds on which the annexation may have been based.

I avail, &c.

Kenneth Johnstone."

"The Ministry for Foreign Affairs

Oslo, November 19, 1930.

"M. le Chargé d'Affaires,

"In a note of the 18th instant you were so good as to state that His Britannic Majesty's Government recognized Norway's sovereignty over Jan Mayen Island.

"I have the honor, while acknowledging the receipt of your note, to ask you to convey to your government the thanks of the Norwegian Government for their friendly attitude towards Norway, which has found expression in the above-mentioned recognition.

"I avail, &c.

(For the Minister for Foreign Affairs),

Aug. Esmarch."

(*Ibid.*, p. 92.)

Ross Dependency, 1923.—By British Order in Council of July 30, 1923, it was stated that—

"Whereas by 'The British Settlements Act, 1887,' it is, amongst other things, enacted that it shall be lawful for His Majesty in Council from time to time to establish all such laws and institutions and constitute such Courts and officers as may appear to His Majesty in Council to be necessary for the peace, order and good government of His Majesty's subjects and others within any British settlement;

"And whereas the coasts of the Ross Sea, with the islands and territories adjacent thereto, between the 160th degree of East Longitude and the 150th degree of West Longitude, which are situated south of the 60th degree of South Latitude, are a British settlement within the meaning of the said Act;

"And whereas it is expedient that provision should be made for the government thereof:

"Now, therefore, His Majesty, by virtue and in exercise of the powers by the said Act, or otherwise in His Majesty vested, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, as follows:

"1. From and after the publication of this Order [August 16, 1923] in the 'Government Gazette of the Dominions of New Zealand' that part of His Majesty's Dominions in the Antarctic Seas, which comprises all the islands and territories between the 160th degree of East Longitude and the 150th degree of West Longitude which are situated south of the 60th degree of South Latitude shall be named the Ross Dependency.

"2. From and after such publication as aforesaid the Governor-General and Commander-in-Chief of the Dominion of New Zealand for the time being (hereinafter called 'the Governor') shall be the Governor of the Ross Dependency; and all the powers and authorities which by this Order are given and granted to the Governor for the time being of the Ross Dependency are hereby vested in him." (117 Br. & For. State Papers, p. 91.)

In this Order in Council no southern limit was named for the British territory.

American writers on polar areas.—In recent years American writers have given considerable attention to topics related to polar areas. There was for many years a keen interest in exploration and discoveries in these regions without any further purpose than in astronomical discoveries. Who would first reach the North Pole became an interesting competition long after the hopes for an easy northwest water passage had disappeared. The rewards of polar fisheries widened knowledge of polar areas.

In concluding an article on Arctic Exploration and International Law in 1909, Dr. James Brown Scott said:

"It would therefore appear that arctic discovery as such vests no title, and that the arctic regions, except and in so far as they have been occupied, are in the condition of Spitzbergen, that is to say, no man's land." (3 A. J. I. L. [1909], p. 941.)

After the World War there was an increase in attention to the significance of control of the polar regions from the political point of view. Mr. David Hunter Miller in an article in Foreign Affairs in April 1927 raises certain questions saying:

"The area of the earth's surface north of the Arctic Circle (66°30′, as usually drawn; strictly it is 66°312/3′) comprises over eight million square miles. What States have sovereignty over this vast region? To what countries are we to assign the known and the unknown?" (4 Foreign Affairs, p. 47.)

After reviewing the various claims to the Arctic territories, Mr. Miller sums up the claims as follows:

"It comes to this: the areas round the North Pole, whatever they may be, form three or four great cone-shaped

sectors—the Canadian sector from 60° west to 141° west; the American sector from 141° west to 169° west; and the great Russian sector running from 169° west to some undefined line in the neighborhood of 30° or 40° east longitude. The remainder of the circle, from say 40° east to 60° west, would, so far as this theory goes, be unassigned, but, very fittingly, that remainder seems to contain no land at all north of Spitsbergen and Greenland. Possibly a few islands close to the north Greenland coast are exceptions to this statement.

"Whatever may be said by way of argument against this Canadian theory, it is certainly a highly convenient one. All unknown territory in the Arctic is appropriated by three Great Powers and divided among them on the basis of the more southerly status quo. Certainly if these three Powers are satisfied with such a partition, the rest of the world will have to be." (*Ibid*, p. 59.)

Referring briefly to the Antarctic in 1927, after mentioning Coats Land, Enderby Land, Kemp Land, etc., Mr. Miller says:

"It may be assumed that each 'Land,' while not capable of precise delimitation and perhaps referring primarily to the coast, is intended to include the segment to the south as far as the Pole, the hinterland or 'hinter-ice,' so to speak. Taken all together, with the Ross Dependency and the Falkland Islands Dependency, they would include nearly all of the Antarctic Continent." (5 *Ibid.*, p. 509.)

The judgment of the Permanent Court of International Justice of April 5, 1933, concerning the Legal Status of Eastern Greenland paid great respect to ancient claims even though these had not been followed by actual and continued control. There were, however, for many years diplomatic assertions of rights over Greenland territory. In a declaration accompanying the treaty confirming the purchase of the Danish West Indies by the United States on August 4, 1916 (proclaimed January 25, 1917), it was stated "that the Government

of the United States of America will not object to the Danish Government extending their political and economic interests to the whole of Greenland. Professor Charles Cheney Hyde says of this and other diplomatic communications of the claimants:

"Nevertheless, the readiness of the court to find in the conduct in behalf of the monarchs of Norway and Denmark the creation and maintenance of rights of sovereignty over an unoccupied area, and the early development of the territorial limits of those rights by assertions of authority that were and remained unsupported by the exercise of actual administrative control or occupation, is of much significance." (27 A. J. I. L. [1933], p. 738.)

The polar sector.—The polar sector to which reference has been made since early in the nineteenth century is a spherical triangle with apex at the pole and bounded by two meridians, and having usually as a base a coast line or a parallel of latitude. Within this area various degree of control may be claimed and inchoate title to all lands is usually claimed.

The sector theory.—The sector theory as applied to polar areas would cover the area of a spherical triangle the base of which would be the line of polar jurisdiction of a state, and the apex the pole so far as this area is free from other jurisdiction. The claim is also made that the jurisdiction would extend below the surface of the sector to the center of the earth and above the sector to the limit of aerial jurisdiction.

Whether the base line of the polar sector must be wholly or in part within the polar circle has been a debatable question, but it would be more difficult to determine just where this line should be if not limited to the polar area.

In the case before the Permanent Court of International Justice in 1933 on the Legal Status of Eastern Greenland, even though much of the area of Greenland is north of the Arctic Circle, the three mile limit of coast jurisdiction seems to have been recognized.

Opinion of Smedal.—Gustav Smedal, who has given much attention to the sector doctrine, said:

"The sector principle is not a legal principle having a title in the law of nations. This is partly admitted by those who uphold it. Nor should the principle be embodied in international law, for one reason because it aims at a monopoly which will doubtless delay, and partly prevent, an exploitation of the polar regions.

"It is of interest to observe how States that claim sovereignty in sector areas nevertheless attempt to take charge of lands lying in these areas by effective occupation. By so doing they show they fully realise that a territorial sovereignty which they may rightly require to be respected by foreign States, must be based on a more solid foundation than the sector principle." (Acquisition of Sovereignty over Polar Areas, p. 64.)

Aerial sovereignty.—Changing attitudes toward rights in the air marked the early decades of the twentieth century. Even the Institute of International Law in 1906 favored the doctrine of freedom of the air subject only to limitations essential to the security of the subjacent state. With the coming of the World War, it became evident that the doctrine of freedom of the air was no longer practicable after the development of aircraft and radio. Control of the superjacent air was assumed by neutrals and by belligerents to the limit of the jurisdiction of states, and the Convention for the Regulation of Aerial Navigation, 1919, recognized "that every Power has complete and exclusive sov-

ereignty over the air space above its territory," and this included territorial waters. Over areas which are not under any jurisdiction, as the high seas, the air is free and the delineation of maritime jurisdiction therefore becomes important.

Aerial commerce.—During the period since the World War, civil aerial commerce has increased in number of aircraft and in passengers, and in mail carried and miles flown, at a ratio that seems almost inconceivable. In 1926 air express in the United States was less than 4,000 pounds; in 1935 the total was nearly 14,000,000 pounds. The speed of aircraft in Europe increased in the five year period from 1930 to 1935 from about 275 kilometers per hour to more than 700 kilometers. The radius of flight has almost eliminated distance so that the limits of national boundaries are insignificant and some states may be flown over in a few minutes. Aids to aerial navigation through radio and other means have greatly facilitated aerial commerce. The knowledge of weather conditions is easily transmitted from surface stations. Some of the difficulties of flight in the upper altitudes are being overcome and enthusiasts are even looking forward to interplanetary journeys.

Aircraft and neutral jurisdiction.—From the nature of aerial navigation it is evident that domestic legislation of a single state could cover only a limited space within which aircraft would normally operate. The period of the World War, 1914–18, gave ample opportunity for testing the attitude of neutral states toward belligerent aircraft. The prohibition of entrance to neutral jurisdiction was general and many belligerent aircraft were shot down when above neutral land or maritime juris-

diction. Even in time of peace, military aircraft are often forbidden to fly over foreign territory without previous authorization to be requested through diplomatic representatives.

Aircraft in distress.—During the World War aircraft of a belligerent entering neutral territory in distress or in a disabled condition were usually interned, and the unratified rules of the Commission of Jurists, The Hague, 1923, accepted internment as the treatment to be accorded to belligerent aircraft entering neutral jurisdiction "for any reason whatsoever." That a neutral aircraft in distress entering a belligerent jurisdiction should be interned or has violated any law does not necessarily follow. That a belligerent would be justified in taking precautions essential to its safety and to the unhampered carrying out of its military plans is not denied. This may even extend to the area of immediate military operations on the high sea, but not to an area more remote.

Commission of Jurists, 1923.—The Commission of Jurists which drew up the rules for aerial warfare, 1923, formulated the following:

"Article 37. Members of the crew of a neutral aircraft which has been detained by a belligerent shall be released unconditionally, if they are neutral nationals and not in the service of the enemy. If they are enemy nationals or in the service of the enemy, they may be made prisoners of war.

"Passengers are entitled to be released unless they are in the service of the enemy or are enemy nationals fit for military service, in which cases they may be made prisoners of war.

"Release may in any case be delayed if the military interests of the belligerent so require.

"The belligerent may hold as prisoners of war any member of the crew or any passenger whose service in a flight at the close of which he has been captured has been of special

and active assistance to the enemy." (1924 Naval War College, International Law Documents, p. 130.)

Comment on this article explains that—

"If they are of enemy nationality or in the service of the enemy, or engaged in a violation of neutrality, there is good reason for detaining them as prisoners of war. If not, they should be released unconditionally.

"Passengers who are in the service of the enemy or who are enemy nationals fit for military service may likewise be detained." (*Ibid.*)

It was admitted that temporary delay in release might be a military exigency without infringing on the right. When crew or passengers had rendered military service during the flight they might be made prisoners of war regardless of nationality. This rule was said to be in conformity with World War practice but had not received "unanimous assent," because it was "an extension of the accepted rules of international law" and lack of provisions for unconditional release.

It has been admitted that reservists in transit from a neutral state to a belligerent to enter military service may be allowed to depart by a neutral state provided this does not constitute the setting on foot of a military expedition from the neutral state. That persons already embodied in the military service of a belligerent might be liable to be removed from a vessel seemed to be in accord with the practice during the World War. That citizens of neutral states might be in such a category would seem to be very unusual, as foreign enlistment is contrary to the domestic law of most states and is a violation of neutrality. Journeying to a belligerent country for the purpose of enlisting is not prohibited. Even the rules of the Commission of

Jurists, 1923, presume liability on the ground that "services have been rendered." The liability seems to rest upon persons who are "embodied in the service" and therefore under legal obligation to serve, or persons who "have rendered service."

Transit in polar regions.—The movement of persons and property in the polar regions has long been a capital problem. The climatic conditions have been very severe in some parts and snow and ice have added difficulties. Long periods of darkness further limited activities. When sailing vessels relied solely on air currents, their movements were to some degree seasonal and correspondingly slow, and the speed of sailing vessels in Arctic ice was relatively insignificant. Russian ice breakers, however, became increasingly serviceable. Dog and reindeer sleds were used for some purposes. More recently steam vessels, tractors, aero-sleds and various types of aircraft and radio have made polar regions relatively accessible and removed many barriers.

Merchant submarines.—It has been mentioned as a possibility that if a satisfactory surface passage through the polar ice cannot be found, a passage under the ice for a part of the distance might be discovered. This has led to the renewal of the discussion as to whether submarine merchant vessels would be admitted to waters of foreign states.

The entrance of foreign merchant submarines became a subject of discussion in 1916 when the German submarine *Deutschland* entered American waters. The fact that the United States was neutral and Germany was at war led the British Government to give the Secretary of State of the United

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States quite full information upon the British attitude in the matter in a communication of July 3, 1916:

"Now, persistent rumours are current that a German submarine is on its way to a United States port. In view of such a possibility, I am directed by Sir Edward Grey to submit for your consideration some of the views held by His Majesty's Government on the issues raised by the visit of such a craft to a neutral port.

"It is unlikely that a German submarine would cross to an American port except for the purpose of conducting hostile operations on this side of the Atlantic. The practice of admitting belligerent vessels of war into neutral ports and allowing them supplies arises, as you are aware, out of the exigencies of life at sea and from the hospitality which it is customary to extend to vessels of friendly powers. But the principle does not extend to enabling such vessels to utilise neutral ports and obtain supplies for the purpose of facilitating their belligerent operations.

"In 1904 when the Russian Baltic Fleet was about to sail for the Far East to attack the Japanese forces and was expected to coal in British ports, His Majesty's Government publicly defined their attitude in the above sense and made it clear that the use of British ports by belligerent men-of-war under such circumstances could not be regarded by them as consistent with the declared neutrality of Great Britain in the war then in progress.

"The enemy submarines have been endeavoring for nearly eighteen months to prey upon the Allied and neutral commerce, and throughout that period enemy governments have never claimed that their submarines were entitled to obtain supplies from neutral ports. This must have been due to the fact that they thought they would be met with a refusal and that hospitality could not be claimed as of right. The difficulty of knowing the movements or controlling the subsequent action of the submarines renders it impossible for the neutral to guard against any breaches of neutrality after the submarine has left port and justifies the neutral in drawing a distinction between surface ships and submarines. The latter, it is thought, should be treated on the same

footing as seaplanes or other aircraft and should not be allowed to enter neutral ports at all. This is the rule prescribed during the present war by Norway and Sweden. Another point of distinction between surface ships and submarines should be borne in mind. A surface vessel demanding the hospitality of a neutral port runs certain inevitable risks; its whereabouts become known and an enemy cruiser can await its departure from port. This and similar facts put a check on the abuse by belligerent surface ships of neutral hospitality. No such disadvantages limit the use to which the Germans might put neutral ports as bases of supplies for submarine raiders.

"For these reasons, in the opinion of His Majesty's Government, if any enemy submarine attempts to enter a neutral port, permission should be refused by the authorities. If the submarine enters it should be interned unless it has been driven into port by necessity. In the latter case it should be allowed to depart as soon as necessity is at an end. In no circumstances should it be allowed to obtain supplies.

"If a submarine should enter a neutral port flying the mercantile flag His Majesty's Government are of opinion that it is the duty of the neutral authorities concerned to enquire closely into its right to fly that flag, to inspect the vessel thoroughly and, in the event of torpedoes, torpedo tubes or guns being found on board, to refuse to recognise it as a merchant ship.

"In bringing the above to your serious consideration I have the honor to express the confident hope that the United States Government will feel able to agree in the views of His Majesty's Government and to treat submarine vessels of belligerent powers visiting United States port accordingly." (Foreign Relations, U. S., 1916, Sup., p. 765.)

The Acting Secretary of State acknowledged the receipt of the communication and later indicated, that as to the *Deutschland,* he thought the British "were making entirely too much of the incident."

On arrival in Baltimore, the German submarine *Deutschland* was found to be a merchant vessel with a cargo of dyestuffs. (*Ibid.,* p. 768.)

The French Embassy on August 21, 1916, transmitted a memorandum to the Department of State which related to submarine navigation. Later identic memoranda were received from British, Russian, Japanese and Italian embassies and the Portuguese Legation. The memorandum was as follows:

"In view of the development of submarine navigation, and by reason of the acts which, in present circumstances, may unfortunately be expected from enemy submarines, the Allied Governments consider it necessary, in order not only to safeguard their belligerent rights and the liberty of commercial navigation, but to avoid risks of dispute, to urge neutral governments to take effective measures, if they have not already done so, with a view to preventing belligerent submarine vessels, whatever the purpose to which they are put, from making use of neutral waters, roadsteads, and ports.

"It may further be said that any place which provides a submarine warship far from its base with opportunity for rest and replenishment of its supplies thereby furnishes such an addition to its powers that the place becomes in fact, through the advantages which it gives, a base of naval operations.

"In view of the state of affairs thus existing, the Allied Governments are of opinion that—

"Submarine vessels should be excluded from the benefit of the rules hitherto recognized by the law of nations regarding the admission of vessels of war or merchant vessels into neutral waters, roadsteads, or ports, and their sojourn in them.

"Any belligerent submarine entering a neutral port should be detained there.

"The Allied Governments take this opportunity to point out to neutral powers the grave danger incurred by neutral submarines in navigating regions frequented by belligerent submarines." (*Ibid.*, p. 769.)

In concluding, a somewhat detailed reply, the Secretary of State said:

"the Government of the United States reserves its liberty of action in all respects and will treat such vessels as, in its opinion, becomes the action of a power which may be said to have taken the first steps toward establishing the principles of neutrality and which for over a century has maintained those principles in the traditional spirit and with the high sense of impartiality in which they were conceived.

"In order, however, that there should be no misunderstanding as to the attitude of the United States, the Government of the United States announces to the Allied powers that it holds it to be the duty of belligerent powers to distinguish between submarines of neutral and belligerent nationality, and that responsibility for any conflict that may arise between belligerent warships and neutral submarines on account of the neglect of a belligerent to so distinguish between these classes of submarines must rest entirely upon the negligent power." (*Ibid.*, p. 771.)

An inquiry undertaken by the United States about this time showed that many neutral states reserved the right to treat private merchant submarines as other private merchant vessels would be treated.

Résumé.—(*a*) During the World War neutral states prohibited the use of the superjacent air by aircraft of all descriptions and in many cases shot down aircraft entering this jurisdiction. Subsequent conventions, proposed or concluded, have usually affirmed the complete sovereignty of the subjacent state in the superjacent air not merely in the time of war but also in the time of peace. Many conventions, mutually permit and regulate in detail the entrance of foreign aircraft, the use of aerodromes, the bounds between which entrance may take place and the routes to be followed, etc.

Conventions also specifically state that the provisions apply as well to the air above jurisdictional waters as above land. At The Hague in 1923, the Commission of Jurists discussed some of these propositions for extension of jurisdiction and reported:

"Detailed consideration of the proposal led the majority of the delegations to think that the suggestion is not practicable.

"It seems inevitable that great confusion would follow from any rule which laid down a different width for the territorial airspace from that recognised for territorial waters, more particularly in the case of neutral countries for whose benefit and protection the proposal is put forward. As an example it is only necessary to take article 42, which obliges a neutral State to endeavour to compel a belligerent military aircraft entering its jurisdiction to alight. If the aircraft entered the jurisdiction from over the high seas, it would do so at 10 miles from the coast, and if in compliance with neutral orders it forthwith alighted on the water, it would then be outside the neutral jurisdiction, and the neutral State could not intern the aircraft.

"On principle it would seem that the jurisdiction in the airspace should be appurtenant to the territorial jurisdiction enjoyed beneath it, and that in the absence of a territorial jurisdiction beneath, there is no sound basis for jurisdiction in the air.

"Furthermore, it is felt that the obligation to enforce respect for neutral rights throughout a 10-mile belt would impose an increased burden on neutral Powers without adequate compensating advantages." (1924 Naval War College, Int. Law Situations, p. 152.)

There seems ample ground for prohibition of the use of air above the state jurisdiction but not for extension of authority beyond this limit. There is, however, no general agreement upon a maritime jurisdiction off the coast except for three miles, in spite of many claims to more extended jurisdiction.

(*b*) A state may for reasons of its own establish a radio station outside the jurisdiction of any other state and it would become responsible for its control and operation. As a neutral state in control of the station, responsibility would extend to the prevention of the use of the station in any unneutral manner, but not necessarily to the closing of the station. Such a station on the high sea might be for scientific or other purpose having no relation to the war and as such would not be under orders from a belligerent.

(*c*) The right of a state to prevent or to regulate the movement of foreign aircraft is limited to the air within its jurisdiction which extends to the air above its land and maritime boundaries. Generally accepted maritime boundaries now extend at least to three miles from the low-water mark along the coast and three miles outside the limits of its bays. Whether the direction is toward the equator or toward the pole makes no difference—the jurisdiction extends seaward for three miles.

(*d*) All aircraft have equal rights in flight over the high sea. In time of war, neutral aircraft must respect the rights of belligerents. The route over the poles may be found to have special advantages, or routes in some other regions may be found more practicable. These facts do not give to states in the neighborhood any extension of jurisdictional control though extension by conventional agreements might be expedient in some cases.

(e) The right of innocent passage prevails both in time of war and in time of peace.

The three-mile limit is usually measured outward from the low-water mark.

The Conference for the Codification of International Law, The Hague, 1930, gave considerable attention to the determination of the low-water mark and the Report says:

"The traditional expression 'low-water mark' may be interpreted in different ways and requires definition. In practice, different States employ different criteria to determine this line. The two following criteria have been taken more particularly into consideration: first, the low-water mark indicated on the charts officially used by the Coastal State, and, secondly, the line of mean low-water spring tides. Preference was given to the first, as it appeared to be the more practical. Not every State, it is true, possesses official charts published by its own hydrographic services, but every Coastal State has some chart adopted as official by the State authorities, and a phrase has therefore been used which also includes these charts.

"The divergencies due to the adoption of different criteria on the different charts are very slight and can be disregarded. In order to guard against abuse, however, the proviso has been added that the line indicated on the chart must not depart appreciably from the more scientific criterion: the line of mean low-water spring tides. The term 'appreciably' is admittedly vague. Inasmuch, however, as this proviso would only be of importance in a case which was clearly fraudulent, and as, moreover, absolute precision would be extremely difficult to attain, it is thought that it might be accepted.

"If an elevation of the sea bed which is only uncovered at low tide is situated within the territorial sea off the mainland, or off an island, it is to be taken into consideration on the analogy of the North Sea Fisheries Convention of 1882 in determining the base line of the territorial sea.

"It must be understood that the provisions of the present Convention do not prejudge the questions which arise in regard to coasts which are ordinarily or perpetually icebound." (24 A. J. I. L., Sup. [1930], p. 248.)

On a sandy beach the mark may shift at different seasons because of changing configuration of the shore line.

Along a cliff the low-water mark may be relatively permanent. Similarly the low-water mark may be relatively at the same line along permanent ice and it may be essential that the adjacent state exercise jurisdiction over this ice and the usual distance over the adjacent sea in order that its rights may be secure.

It must be admitted that the Conference for the Codification of International Law was unable to reach an agreement upon the width in miles of the belt of sea which should be regarded as under the jurisdiction of each state. A large number of states, however, accept the three-mile limit. It was mentioned by the Hague Conference in its report to the League of Nations that—

"In this connection it is suggested that the Council of the League should consider whether the various States should be invited to forward to the Secretary-General official information, either in the form of charts or in some other form, regarding the base lines adopted by them for the measurement of their belts of territorial sea." (*Ibid.*, p. 238.)

In regard to passage this same report states,

"Article 3. 'Passage' means navigation through the territorial sea for the purpose either of traversing that sea without entering inland waters, or of proceeding to inland waters, or of making for the high sea from inland waters.

"Passage is not *innocent* when a vessel makes use of the territorial sea of a Coastal State for the purpose of doing any act prejudicial to the security, to the public policy or to the fiscal interests of that State.

"Passage includes stopping and anchoring, but in so far as the same are incidental to ordinary navigation or are

rendered necessary by *force majeure* or by distress." (*Ibid.*, p. 240.)

(*f*) During the World War submarine vessels were in many states prohibited entrance except upon the surface and this applied alike to all submarines.

At the Conference for the Codification of International Law, The Hague, 1930, mention of vessels other than warships received consideration, and it was provided:

"VESSELS OTHER THAN WARSHIPS.

"ARTICLE 4. A Coastal State may put no obstacles in the way of the innocent passage of foreign vessels in the territorial sea.

"Submarine vessels shall navigate on the surface.

"*Observations.*

"The expression 'vessels other than warships' includes not only merchant vessels, but also vessels such as yachts, cable ships, etc., if they are not vessels belonging to the naval forces of a State at the time of the passage." (24 A. J. I. L., Sup. [1930], p. 241.)

It has been admitted that underwater navigation off ports might endanger other navigation and the enforcement of customs and other regulations would be difficult and in some cases impossible so that a requirement that foreign submarines navigate on the surface is deemed reasonable.

SOLUTION

(*a*) State M may lawfully prohibit the flight of aircraft above its territorial and maritime jurisdiction.[1]

[1] See note 1, *supra*, p. 70.

It is not lawful to interfere with the flight of aircraft outside this space.

(*b*) State O may not lawfully order the radio station of state N to be closed though it may protest to state N against any violation of neutrality in its use.

(*c*) State O may lawfully prohibit or regulate the entrance to its jurisdiction of any or all aircraft.

(*d*) State O may not lawfully seize the aircraft of state M.

(*e*) State P may not lawfully prohibit innocent passage though it may issue regulations essential to its own protection.

(*f*) State N may lawfully prohibit the entrance or regulate the movements of vessels of war or regulate the movements of other vessels within its territorial waters when essential for its protection.

APPENDIXES

I

Treaty to Avoid or Prevent Conflicts Between the American States

(44 Stat. 2527)

The Governments represented at the Fifth International Conference of American States, desiring to strengthen progressively the principles of justice and of mutual respect which inspire the policy observed by them in their reciprocal relations, and to quicken in their peoples sentiments of concord and of loyal friendship which may contribute toward the consolidation of such relations,

Confirm their most sincere desire to maintain an immutable peace, not only between themselves but also with all the other nations of the earth;

Condemn armed peace which increases military and naval forces beyond the necessities of domestic security and the sovereignty and independence of States, and,

With the firm purpose of taking all measures which will avoid or prevent the conflicts which may eventually occur between them, agree to the present treaty, negotiated and concluded by the Plenipotentiary Delegates whose full powers were found to be in good and due form by the Conference:

[Here follow the names of the Plenipotentiaries.]

ARTICLE I

All controversies which for any cause whatsoever may arise between two or more of the High Contracting Parties and which it has been impossible to settle through diplomatic channels, or to submit to arbitration in accordance with existing treaties, shall be submitted for investigation and report to a Commission to be established in the manner provided for in Article IV. The High Contracting Parties undertake, in case of disputes, not to begin mobilization or concentration of troops on the frontier of the other Party, nor to engage in any hostile acts or preparations for hostilities, from the time steps are taken to convene the Commission until the said Commission has rendered its report or until the expiration of the time provided for in Article VII.

This provision shall not abrogate nor limit the obligations contained in treaties of arbitration in force between two or more of the High Contracting Parties, nor the obligations arising out of them.

It is understood that in disputes arising between Nations which have no general treaties of arbitration, the investigation shall not take place in questions affecting constitutional provisions, nor in questions already settled by other treaties.

ARTICLE II

The controversies referred to in Article I shall be submitted to the Commission of Inquiry whenever it has been impossible to settle them through diplomatic negotiations or procedure or by submission to arbitration, or in cases in

which the circumstances of fact render all negotiation impossible and there is imminent danger of an armed conflict between the Parties. Any one of the Governments directly interested in the investigation of the facts giving rise to the controversy may apply for the convocation of the Commission of Inquiry and to this end it shall be necessary only to communicate officially this decision to the other Party and to one of the Permanent Commissions established by Article III.

ARTICLE III

Two Commissions to be designated as permanent shall be established with their seats at Washington (United States of America) and at Montevideo (Uruguay). They shall be composed of the three American diplomatic agents longest accredited in said capitals, and at the call of the Foreign Offices of those States they shall organize, appointing their respecting chairmen. Their functions shall be limited to receiving from the interested Parties the request for a convocation of the Commission of Inquiry, and to notifying the other Party thereof immediately. The Government requesting the convocation shall appoint at the same time the persons who shall compose the Commission of Inquiry in representation of that Government, and the other Party shall, likewise, as soon as it receives notification, designate its members.

The Party initiating the procedure established by this Treaty may address itself, in doing so, to the Permanent Commission which it considers most efficacious for a rapid organization of the Commission of Inquiry. Once the request for convocation has been received and the Permanent Commission has made the respective notifications the question or controversy existing between the Parties and as to which no agreement has been reached, will *ipso facto* be suspended.

ARTICLE IV

The Commission of Inquiry shall be composed of five members, all nationals of American States, appointed in the following manner: each Government shall appoint two at the time of convocation, only one of whom may be a national of its country. The fifth shall be chosen by com-

mon accord by those already appointed and shall perform the duties of President. However, a citizen of a nation already represented on the Commission may not be elected. Any of the Governments may refuse to accept the elected member, for reasons which it may reserve to itself, and in such event a substitute shall be appointed, with the mutual consent of the Parties, within thirty days following the notification of this refusal. In the failure of such agreement, the designation shall be made by the President of an American Republic not interested in the dispute, who shall be selected by lot by the Commissioners already appointed, from a list of not more than six American Presidents to be formed as follows: each Government party to the controversy, or if there are more than two Governments directly interested in the dispute, the Government or Governments on each side of the controversy, shall designate three Presidents of American States which maintain the same friendly relations with all the Parties to the dispute.

Whenever there are more than two Governments directly interested in a controversy, and the interest of two or more of them are identical, the Government or Governments on each side of the controversy shall have the right to increase the number of their Commissioners, as far as it may be necessary, so that both sides in the dispute may always have equal representation on the Commission.

Once the Commission has been thus organized in the capital city, seat of the Permanent Commission which issued the order of convocation, it shall notify the respective Governments of the date of its inauguration, and it may then determine upon the place or places in which it will function, taking into account the greater facilities for investigation.

The Commission of Inquiry shall itself establish its rules of procedure. In this regard there are recommended for incorporation into said rules of procedure the provisions contained in Articles 9, 10, 11, 12, and 13 of the Convention signed in Washington, February, 1923, between the Government of the United States of America and the Governments of the Republics of Guatemala, El Salvador, Honduras, Nicaragua, and Costa Rica, which appear in the appendix to this Treaty.

Its decisions and final report shall be agreed to by the majority of its members.

Each Party shall bear its own expenses and a proportionate share of the general expenses of the Commission.

ARTICLE V

The Parties to the controversy shall furnish the antecedents and data necessary for the investigation. The Commission shall render its report within one year from the date of its inauguration. If it has been impossible to finish the investigation or draft the report within the period agreed upon, it may be extended six months beyond the period established, provided the Parties to the controversy are in agreement upon this point.

ARTICLE VI

The findings of the Commission will be considered as reports upon the disputes which were the subjects of the investigation, but will not have the value or force of judicial decisions or arbitral awards.

ARTICLE VII

Once the report is in possession of the Governments parties to the dispute, six months' time will be available for renewed negotiations in order to bring about a settlement of the difficulty in view of the findings of said report; and if during this new term they should be unable to reach a friendly arrangement, the Parties in dispute shall recover entire liberty of action to proceed as their interests may dictate in the question dealt with in the investigation.

ARTICLE VIII

The present Treaty does not abrogate analogous conventions which may exist or may in the future exist between two or more of the High Contracting Parties; neither does it partially abrogate any of their provisions, although they may provide special circumstances or conditions differing from those herein stipulated.

ARTICLE IX

The present Treaty shall be ratified by the High Contracting Parties, in conformity with their respective constitutional procedures, and the ratifications shall be deposited in the Ministry for Foreign Affairs of the Republic of Chile, which will communicate them through diplomatic channels to the other Signatory Governments, and it shall enter into effect for the Contracting Parties in the order of ratification.

The Treaty shall remain in force indefinitely; any of the High Contracting Parties may denounce it and the denunciation shall take effect as regards the Party denouncing one year after notification thereof has been given.

Notice of the denunciation shall be sent to the Government of Chile, which will transmit it for appropriate action to the other Signatory Governments.

ARTICLE X

The American States which have not been represented in the Fifth Conference may adhere to the present Treaty, transmitting the official documents setting forth such adherence to the Ministry for Foreign Affairs of Chile, which will communicate it to the other Contracting Parties.

In Witness Whereof, the Plenipotentiaries and Delegates sign this Convention in Spanish, English, Portuguese, and French and affix the seal of the Fifth International Conference of American States, in the city of Santiago, Chile, on the 3rd day of May in the year one thousand nine hundred and twenty three.

This Convention shall be filed in the Ministry for Foreign Affairs of the Republic of Chile in order that certified copies thereof may be forwarded through diplomatic channels to each of the Signatory States.

Appendix

ARTICLE I

The Signatory Governments grant to all the Commissions which may be constituted the power to summon witnesses, to administer oaths and to receive evidence and testimony.

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ARTICLE II

During the investigation the Parties shall be heard and may have the right to be represented by one or more agents and counsel.

ARTICLE III

All members of the Commission shall take oath duly and faithfully to discharge their duties before the highest judicial authority of the place where it may meet.

ARTICLE IV

The Inquiry shall be conducted so that both Parties shall be heard. Consequently, the Commission shall notify each Party of the statements of facts submitted by the other, and shall fix periods of time in which to receive evidence.

Once the Parties are notified, the Commission shall proceed to the investigation, even though they fail to appear.

ARTICLE V

As soon as the Commission of Inquiry is organized, it shall at the request of any of the Parties to the dispute, have the right to fix the status in which the Parties must remain, in order that the situation may not be aggravated and matters may remain in *statu quo* pending the rendering of the report by the Commission.

II

General Treaty of Inter-American Arbitration

(49 Stat. 3153)

The Governments of Venezuela, Chile, Bolivia, Uruguay, Costa Rica, Perú, Honduras, Guatemala, Haiti, Ecuador, Colombia, Brazil, Panamá, Paraguay, Nicaragua, Mexico, El Salvador, the Dominican Republic, Cuba, and the United States of America, represented at the Conference on Conciliation and Arbitration, assembled at Washing-

ton, pursuant to the Resolution adopted on February 18, 1928, by the Sixth International Conference of American States held in the City of Habana;

In accordance with the solemn declarations made at said Conference to the effect that the American Republics condemn war as an instrument of national policy and adopt obligatory arbitration as the means for the settlement of their international differences of a juridical character;

Being convinced that the Republics of the New World, governed by the principles, institutions, and practices of democracy and bound furthermore by mutual interests, which are increasing each day, have not only the necessity but also the duty of avoiding the disturbance of continental harmony whenever differences which are susceptible of judicial decision arise among them;

Conscious of the great moral and material benefits which peace offers to humanity and that the sentiment and opinion of America demand, without delay, the organization of an arbitral system which shall strengthen the permanent reign of justice and law;

And animated by the purpose of giving conventional form to these postulates and aspirations with the minimum exceptions which they have considered indispensable to safeguard the independence and sovereignty of the States and in the most ample manner possible under present international conditions, have resolved to effect the present treaty, and for that purpose have designated the Plenipotentiaries hereinafter named:

[Here follow the names of Plenipotentiaries.]

Who, after having deposited their full powers, found in good and due form by the Conference, have agreed upon the following:

ARTICLE I

The High Contracting Parties bind themselves to submit to arbitration all differences of an international character which have arisen or may arise between them by virtue of a claim of right made by one against the other under treaty or otherwise, which it has not been possible to adjust by diplomacy and which are juridical in their nature by reason

of being susceptible of decision by the application of the principles of law.

There shall be considered as included among the questions of juridical character:

(*a*) The interpretation of a treaty;

(*b*) Any question of international law;

(*c*) The existence of any fact which, if established, would constitute a breach of an international obligation;

(*d*) The nature and extent of the reparation to be made for the breach of an international obligation.

The provisions of this treaty shall not preclude any of the Parties, before resorting to arbitration, from having recourse to procedures of investigation and conciliation established in conventions then in force between them.

ARTICLE II

There are excepted from the stipulations of this treaty the following controversies:

(*a*) Those which are within the domestic jurisdiction of any of the Parties to the dispute and are not controlled by international law; and

(*b*) Those which affect the interest or refer to the action of a State not a Party to this treaty.

ARTICLE III

The arbitrator or tribunal who shall decide the controversy shall be designated by agreement of the Parties.

In the absence of an agreement the following procedure shall be adopted:

Each Party shall nominate two arbitrators, of whom only one may be a national of said Party or selected from the persons whom said Party has designated as members of the Permanent Court of Arbitration at The Hague. The other member may be of any other American nationality. These arbitrators shall in turn select a fifth arbitrator who shall be the president of the court.

Should the arbitrators be unable to reach an agreement among themselves for the selection of a fifth American arbitrator, or in lieu thereof, of another who is not, each Party shall designate a non-American member of the Permanent

Court of Arbitration at The Hague, and the two persons so designated shall select the fifth arbitrator, who may be of any nationality other than that of a Party to the dispute.

ARTICLE IV

The Parties to the dispute shall formulate by common accord, in each case, a special agreement which shall clearly define the particular subject-matter of the controversy, the seat of the court, the rules which will be observed in the proceedings, and the other conditions to which the Parties may agree.

If an accord has not been reached with regard to the agreement within three months reckoned from the date of the installation of the court, the agreement shall be formulated by the court.

ARTICLE V

In case of death, resignation or incapacity of one or more of the arbitrators the vacancy shall be filled in the same manner as the original appointment.

ARTICLE VI

When there are more than two States directly interested in the same controversy, and the interests of two or more of them are similar, the State or States who are on the same side of the question may increase the number of arbitrators on the court, provided that in all cases the Parties on each side of the controversy shall appoint an equal number of arbitrators. There shall also be a presiding arbitrator selected in the same manner as that provided in the last paragraph of Article 3, the Parties on each side of the controversy being regarded as a single Party for the purpose of making the designation therein described.

ARTICLE VII

The award, duly pronounced and notified to the Parties, settles the dispute definitively and without appeal.

Differences which arise with regard to its interpretation or execution shall be submitted to the decision of the court which rendered the award.

ARTICLE VIII

The reservations made by one of the High Contracting Parties shall have the effect that the other Contracting Parties are not bound with respect to the Party making the reservations except to the same extent as that expressed therein.

ARTICLE IX

The present treaty shall be ratified by the High Contracting Parties in conformity with their respective constitutional procedures.

The original treaty and the instruments of ratification shall be deposited in the Department of State of the United States of America which shall give notice of the ratifications through diplomatic channels to the other signatory Governments and the treaty shall enter into effect for the High Contracting Parties in the order that they deposit their ratifications.

This treaty shall remain in force indefinitely, but it may be denounced by means of one year's previous notice at the expiration of which it shall cease to be in force as regards the Party denouncing the same, but shall remain in force as regards the other signatories. Notice of the denunciation shall be addressed to the Department of State of the United States of America which will transmit it for appropriate action to the other signatory Governments.

Any American State not a signatory of this treaty may adhere to the same by transmitting the official instrument setting forth such adherence to the Department of State of the United States of America which will notify the other High Contracting Parties thereof in the manner heretofore mentioned.

In witness whereof the above mentioned Plenipotentiaries have signed this treaty in English, Spanish, Portuguese, and French and hereunto affix their respective seals.

Done at the city of Washington, on this fifth day of January, 1929.

[Translation of Reservations]

The Delegation of Venezuela signs the present treaty of arbitration with the following reservations:

First. There shall be excepted from this Treaty those matters which, according to the Constitution or the laws of Venezuela, are under the jurisdiction of its courts; and especially those matters relating to pecuniary claims of foreigners. In such matters arbitration shall not be resorted to except when legal remedies having been exhausted by the claimant it shall appear that there has been a denial of justice.

Second. There shall also be excepted those matters controlled by international agreements now in force.

Chile does not accept obligatory arbitration for questions which have their origin in situations or acts antedating the present treaty nor does it accept obligatory arbitration for those questions which, being under the exclusive competency of the national jurisdiction, the interested parties claim the right to withdraw from the cognizance of the established judicial authorities, unless said authorities decline to pass judgment on any action or exception which any natural or juridical foreign person may present to them in the form established by the laws of the country.

The Delegation of Bolivia, in accordance with the doctrine and policy invariably maintained by Bolivia in the field of international jurisprudence, gives full adherence to and signs the General Treaty of Inter-American Arbitration which the Republics of America are to sanction, formulating the following express reservations:

First. There may be excepted from the provisions of the present agreement, questions arising from acts occurring or conventions concluded before the said treaty goes into effect, as well as those which, in conformity with international law, are under the exclusive jurisdiction of the state.

Second. It is also understood that, for the submission to arbitration of a territorial controversy or dispute, the zone to which the said arbitration is to apply must be previously determined in the arbitral agreement.

I vote in favor of the Treaty of Arbitration, with the reservation formulated by the Delegation of Uruguay at the Fifth Pan American Conference, favoring broad arbitration; and with the understanding that arbitration will be resorted to only in case of denial of justice, when the national tribunals have jurisdiction, according to the legislation of their own country.

Reservations of Costa Rica:

(*a*) The obligations contracted under this Treaty do not annul, abrogate, or restrict the arbitration conventions which are now in force between Costa Rica and another or others of the high contracting parties and do not involve arbitration, disavowal, or renewed discussion of questions which may have already been settled by arbitral awards.

(*b*) The obligations contracted under this Treaty do not involve the arbitration of judgments handed down by the courts of Costa Rica in civil cases which may be submitted to them and with regard to which the interested parties have recognized the jurisdiction of said courts.

The Delegation of Honduras, in signing the present Treaty, formulates an express reservation making it a matter of record that the provisions thereof shall not be applicable to pending international questions or controversies or to those which may arise in the future relative to acts prior to the date on which the said Treaty goes into effect.

The Delegation of Guatemala makes the following reservations:

1. In order to submit to arbitration any questions relating to the boundaries of the nation, the approval of the Legislative Assembly must first be given, in each case, in conformity with the Constitution of the Republic.

2. The provisions of the present Convention do not alter or modify the conventions and treaties previously entered into by the Republic of Guatemala.

The Delegation of Ecuador, pursuant to instructions of its Government, reserves from the jurisdiction of the obligatory arbitration agreed upon in the present Treaty:

1. Questions at present governed by conventions or treaties now in effect;

2. Those which may arise from previous causes or may result from acts preceding the signature of this treaty;

3. Pecuniary claims of foreigners who may not have previously exhausted all legal remedies before the courts of justice of the country, it being understood that such is the interpretation and the extent of the application which the Government of Ecuador has always given to the Buenos Aires Convention of August 11, 1910.

The Delegation of Colombia signs the foregoing Convention with the following two declarations or reservations:

First. The obligations which the Republic of Colombia may contract thereby refer to the differences which may arise from acts subsequent to the ratification of the Convention;

Second. Except in the case of a denial of justice, the arbitration provided for in this convention is not applicable to the questions which may have arisen or which may arise between a citizen, an association or a corporation of one of the parties and the other contracting state when the judges or courts of the latter state are, in accordance with its legislation, competent to settle the controversy.

Reservation of the Delegation of Paraguay:

I sign this treaty with the reservation that Paraguay excludes from its application questions which directly or indirectly affect the integrity of the national territory and are not merely questions of frontiers or boundaries.

Mexican Reservation:

Mexico makes the reservation that differences, which fall under the jurisdiction of the courts, shall not form a subject of the procedure provided for by the Convention, except in case of denial of justice, and until after the judgment passed by the competent national authority has been placed in the class of *res judicata.*

The Delegation of El Salvador to the Conference on Conciliation and Arbitration assembled in Washington accepts and signs the General Treaty of Inter-American Arbitration concluded this day by said Conference, with the following reservations or restrictions:

1. After the words of paragraph 1 of Article I reading: "under treaty or otherwise", the following words are to be

added: "subsequent to the present Convention." The article continues without any other modification.

2. Paragraph (*a*) of Article II is accepted by the Delegation without the final words which read: "and are not controlled by international law", which should be considered as eliminated.

3. This Treaty does not include controversies or differences with regard to points or questions which, according to the Political Constitution of El Salvador, must not be submitted to arbitration, and

4. Pecuniary claims against the nation shall be decided by its judges and courts, since they have jurisdiction thereof, and recourse shall be had to international arbitration only in the cases provided in the Constitution and laws of El Salvador, that is in cases of denial of justice or unusual delay in the administration thereof.

The Dominican Republic, in signing the General Treaty of Inter-American Arbitration, does so with the understanding that controversies relating to questions which are under the jurisdiction of its courts shall not be referred to arbitral jurisdiction except in accordance with the principles of international law.

III

General Convention of Inter-American Conciliation

46 Stat. 2209

The Governments of Venezuela, Chile, Bolivia, Uruguay, Costa Rica, Perú, Honduras, Guatemala, Haiti, Ecuador, Colombia, Brazil, Panamá, Paraguay, Nicaragua, Mexico, El Salvador, the Dominican Republic, Cuba, and the United States of America, represented at the Conference on Conciliation and Arbitration, assembled at Washington, pursuant to the Resolution adopted on February 18, 1928, by the Sixth International Conference of American States held in the City of Habana:

Desiring to demonstrate that the condemnation of war as an instrument of national policy in their mutual relations,

set forth in the above mentioned resolution, constitutes one of the fundamental bases of inter-American relations;

Animated by the purpose of promoting, in every possible way, the development of international methods for the pacific settlement of differences between the States;

Being convinced that the "Treaty to Avoid or Prevent Conflicts between the American States," signed at Santiago de Chile, May 3, 1923, constitutes a notable achievement in inter-American relations, which it is necessary to maintain by giving additional prestige and strength to the action of the commissions established by Articles III and IV of the aforementioned treaty;

Acknowledging the need of giving conventional form to these purposes have agreed to enter into the present Convention, for which purpose they have appointed Plenipotentiaries as follows:

[Here follow names of the Plenipotentiaries.]

Who, after having deposited their full powers, which were found to be in good and due form by the Conference, have agreed as follows:

ARTICLE I

The High Contracting Parties agree to submit to the procedure of conciliation established by this convention all controversies of any kind which have arisen or may arise between them for any reason and which it may not have been possible to settle through diplomatic channels.

ARTICLE II

The Commission of Inquiry to be established pursuant to the provisions of Article IV of the Treaty signed in Santiago de Chile on May 3, 1923, shall likewise have the character of Commission of Conciliation.

ARTICLE III

The Permanent Commissions which have been established by virtue of Article III of the Treaty of Santiago de Chile of May 3, 1923, shall be bound to exercise conciliatory functions, either on their own motion when it appears that there

is a prospect of disturbance of peaceful relations, or at the request of a Party to the dispute, until the Commission referred to in the preceding article is organized.

ARTICLE IV

The conciliatory functions of the Commission described in Article II shall be exercised on the occasions hereinafter set forth:

(1) The Commission shall be at liberty to begin its work with an effort to conciliate the differences submitted to its examination with a view to arriving at a settlement between the Parties.

(2) Likewise the same Commission shall be at liberty to endeavor to conciliate the Parties at any time which in the opinion of the Commission may be considered to be favorable in the course of the investigation and within the period of time fixed therefor in Article V of the Treaty of Santiago de Chile of May 3, 1923.

(3) Finally, the Commission shall be bound to carry out its conciliatory function within the period of six months which is referred to in Article VII of the Treaty of Santiago de Chile of May 3, 1923.

The Parties to the controversy may, however, extend this time, if they so agree and notify the Commission in due time.

ARTICLE V

The present convention does not preclude the High Contracting Parties, or one or more of them, from tendering their good offices or their mediation, jointly or severally, on their own motion or at the request of one or more of the Parties to the controversy; but the High Contracting Parties agree not to make use of those means of pacific settlement from the moment that the Commission described in Article II is organized until the final act referred to in Article XI of this convention is signed.

ARTICLE VI

The function of the Commission, as an organ of conciliation, in all cases specified in Article II of this convention, is to procure the conciliation of the differences subject to its

examination by endeavoring to effect a settlement between the Parties.

When the Commission finds itself to be within the case foreseen in paragraph 3 of Article IV of this convention, it shall undertake a conscientious and impartial examination of the questions which are the subject of the controversy, shall set forth in a report the results of its proceedings, and shall propose to the Parties the bases of a settlement for the equitable solution of the controversy.

ARTICLE VII

Except when the Parties agree otherwise, the decisions and recommendations of any Commission of Conciliation shall be made by a majority vote.

ARTICLE VIII

The Commission described in Article 2 of this convention shall establish its rules of procedure. In the absence of agreement to the contrary, the procedure indicated in Article IV of the Treaty of Santiago de Chile of May 3, 1923, shall be followed.

Each party shall bear its own expenses and a proportionate share of the general expenses of the Commission.

ARTICLE IX

The report and the recommendations of the Commission, insofar as it may be acting as an organ of conciliation, shall not have the character of a decision nor an arbitral award, and shall not be binding on the Parties either as regards the exposition or interpretation of the facts or as regards questions of law.

ARTICLE X

As soon as possible after the termination of its labors the Commission shall transmit to the Parties a certified copy of the report and of the bases of settlement which it may propose.

The Commission in transmitting the report and the recommendations to the Parties shall fix a period of time,

which shall not exceed six months, within which the Parties shall pass upon the bases of settlement above referred to.

ARTICLE XI

Once the period of time fixed by the Commission for the Parties to make their decisions has expired, the Commission shall set forth in a final act the decision of the Parties, and if the conciliation has been effected, the terms of the settlement.

ARTICLE XII

The obligations set forth in the second sentence of the first paragraph of Article I of the Treaty of Santiago de Chile of May 3, 1923, shall extend to the time when the final act referred to in the preceding article is signed.

ARTICLE XIII

Once the procedure of conciliation is under way it shall be interrupted only by a direct settlement between the Parties or by their agreement to accept absolutely the decision *ex aequo et bono* of an American Chief of State or to submit the controversy to arbitration or to an international court.

ARTICLE XIV

Whenever for any reason the Treaty of Santiago de Chile of May 3, 1923, does not apply, the Commission referred to in Article II of this convention shall be organized to the end that it may exercise the conciliatory functions stipulated in this convention; the Commisison shall be organized in the same manner as that prescribed in Article IV of said treaty.

In such cases, the Commission thus organized shall be governed in its operation by the provisions, relative to conciliation, of this convention.

ARTICLE XV

The provisions of the preceding article shall also apply with regard to the Permanent Commissions constituted by

the aforementioned Treaty of Santiago de Chile, to the end that said Commissions may exercise the conciliatory functions prescribed in Article III of this convention.

ARTICLE XVI

The present convention shall be ratified by the High Contracting Parties in conformity with their respective constitutional procedures, provided that they have previously ratified the Treaty of Santiago, Chile, of May 3, 1923.

The original convention and the instruments of ratification shall be deposited in the Ministry for Foreign Affairs of the Republic of Chile which shall give notice of the ratifications through diplomatic channels to the other signatory Governments and the convention shall enter into effect for the High Contracting Parties in the order that they deposit their ratifications.

This convention shall remain in force indefinitely, but it may be denounced by means of notice given one year in advance at the expiration of which it shall cease to be in force as regards the Party denouncing the same, but shall remain in force as regard the other signatories. Notice of the denunciation shall be addressed to the Ministry for Foreign Affairs of the Republic of Chile which will transmit it for appropriate action to the other signatory Governments.

Any American State not a signatory of this convention may adhere to the same by transmitting the official instrument setting forth such adherence, to the Ministry for Foreign Affairs of the Republic of Chile which will notify the other High Contracting Parties thereof in the manner heretofore mentioned.

In witness whereof the aboved mentioned Plenipotentiaries have signed this convention in English, Spanish, Portugese, and French and hereunto affix their respective seals.

Done at the city of Washington, on this fifth day of January 1929.

IV

[Translation]

Anti-War Treaty on Non-Aggression and Conciliation

(49 Stat. 3363, 3375)

The states designated below, in the desire to contribute to the consolidation of peace, and to express their adherence to the efforts made by all civilized nations to promote the spirit of universal harmony;

To the end of condemning wars of aggression and territorial acquisitions that may be obtained by armed conquest, making them impossible and establishing their invalidity through the positive provisions of this treaty, and in order to replace them with pacific solutions based on lofty concepts of justice and equity;

Convinced that one of the most effective means of assuring the moral and material benefits which peace offers to the world, is the organization of a permanent system of conciliation for international disputes, to be applied immediately on the violation of the principles mentioned;

Have decided to put these aims of non-aggression and concord in conventional form, by concluding the present treaty, to which end they have appointed the undersigned plenipotentiaries, who, having exhibited their respective full powers, found to be in good and due form, have agreed upon the following:

ARTICLE I

The High Contracting Parties solemnly declare that they condemn wars of aggression in their mutual relations or those with other states, and that the settlement of disputes or controversies of any kind that may arise among them shall be effected only by the pacific means which have the sanction of international law.

ARTICLE II

They declare that as between the High Contracting Parties, territorial questions must not be settled by violence, and that they will not recognize any territorial arrangement

which is not obtained by pacific means, nor the validity of the occupation or acquisition of territories that may be brought about by force of arms.

ARTICLE III

In case of non-compliance by any state engaged in a dispute, with the obligations contained in the foregoing articles, the contracting states undertake to make every effort for the maintenance of peace. To that end they will adopt in their character as neutrals a common and solidary attitude; they will exercise the political, juridical, or economic means authorized by international law; they will bring the influence of public opinion to bear but will in no case resort to intervention either diplomatic or armed; subject to the attitude that may be incumbent on them by virtue of other collective treaties to which such states are signatories.

ARTICLE IV

The High Contracting Parties obligate themselves to submit to the conciliation procedure established by this treaty, the disputes specially mentioned and any others that may arise in their reciprocal relations, without further limitations than those enumerated in the following article, in all controversies which it has not been possible to settle by diplomatic means within a reasonable period of time.

ARTICLE V

The High Contracting Parties and the states which may in the future adhere to this treaty may not formulate, at the time of signature, ratification, or adherence, other limitations to the conciliation procedure than those which are indicated below:

(*a*) Differences for the solution of which treaties, conventions, pacts, or pacific agreements of any kind whatever may have been concluded, which in no case shall be considered as annulled by this agreement, but supplemented thereby in so far as they tend to assure peace; as well as the quetsions or matters settled by previous treaties;

(*b*) Disputes which the parties prefer to solve by direct settlement or submit by common agreement to an arbitral or judicial solution;

(*c*) Questions which international law leaves to the exclusive competence of each state, under its constitutional system, for which reason the parties may object to their being submitted to the conciliation procedure before the national or local jurisdiction has decided definitely; except in the case of manifest denial or delay of justice, in which case the conciliation procedure shall be initiated within a year at the latest;

(*d*) Matters which affect constitutional precepts of the parties to the controversy. In case of doubt, each party shall obtain the reasoned opinion of its respective tribunal or supreme court of justice, if the latter should be invested with such powers.

The High Contracting Parties may communicate, at any time and in the manner provided for by Article XV, an instrument stating that they have abandoned wholly or in part the limitations established by them in the conciliation procedure.

The effect of the limitations formulated by one of the contracting parties shall be that the other parties shall not consider themselves obligated in regard to that party save in the measure of the exceptions established.

ARTICLE VI

In the absence of a permanent conciliation commission or of some other international organization charged with this mission by virtue of previous treaties in effect, the High Contracting Parties undertake to submit their differences to the examination and investigation of a conciliation commission which shall be formed as follows, unless there is an agreement to the contrary of the parties in each case.

The Conciliation Commission shall consist of five members. Each party to the controversy shall designate a member who may be chosen by it from among its own nationals. The three remaining members shall be designated by common agreement by the parties from among the nationals of third Powers, who must be of different nationalities, must not have

their customary residence in the territory of the interested parties nor be in the service of any of them. The parties shall choose the president of the Conciliation Commission from among the said three members.

If they cannot arrive at an agreement with regard to such designations, they may entrust the selection thereof to a third power or to some other existing international organism. If the candidates so designated are rejected by the parties or by any one of them, each party shall present a list of candidates equal in number to that of the members to be selected, and the names of those to sit on the Conciliation Commission shall be determined by lot.

ARTICLE VII

The tribunals or supreme courts of justice which, in accordance with the domestic legislation of each state, may be competent to interpret, in the last or the sole instance and in matters under their respective jurisdiction, the constitution, treaties, or the general principles of the law of nations, may be designated preferentially by the High Contracting Parties to discharge the duties entrusted by the present treaty to the Conciliation Commission. In this case the tribunal or court may be constituted by the whole bench or may designate some of its members to proceed alone or by forming a mixed commission with members of other courts or tribunals, as may be agreed upon by common accord between the parties to the dispute.

ARTICLE VIII

The Conciliation Commission shall establish its own rules of procedure, which shall provide in all cases for hearing both sides.

The parties to the controversy may furnish and the Commission may require from them all the antecedents and information necessary. The parties may have themselves represented by delegates and assisted by advisers or experts, and also present evidence of all kinds.

ARTICLE IX

The labors and deliberations of the Conciliation Commission shall not be made public except by a decision of its own to that effect, with the assent of the parties.

In the absence of any stipulations to the contrary, the decisions of the Commission shall be made by a majority vote, but the Commission may not pronounce judgment on the substance of the case except in the presence of all its members.

ARTICLE X

It is the duty of the Commission to secure the conciliatory settlement of the disputes submitted to its consideration.

After an impartial study of the questions in dispute, it shall set forth in a report the outcome of its work and shall propose to the parties bases of settlement by means of a just and equitable solution.

The report of the Commission shall in no case have the character of a final decision or arbitral award either with respect to the exposition or the interpretation of the facts, or with regard to the considerations or conclusions of law.

ARTICLE XI

The Conciliation Commission must present its report within one year counting from its first meeting unless the parties should decide by common agreement to shorten or extend this period.

The conciliation procedure having been once begun may be interrupted only by a direct settlement between the parties or by their subsequent decision to submit the dispute by common accord to arbitration or to international justice.

ARTICLE XII

In communicating its report to the parties, the Conciliation Commission shall fix for them a period which shall not exceed six months, within which they must decide as to the bases of the settlement it has proposed. On the expiration of this term, the Commission shall record in a final act the decision of the parties.

This period having expired without acceptance of the settlement by the parties, or the adoption by common accord of another friendly solution, the parties to the dispute shall regain their freedom of action to proceed as they may see fit within the limitations flowing from Articles I and II of this treaty.

ARTICLE XIII

From the initiation of the conciliatory procedure until the expiration of the period fixed by the Commission for the parties to make a decision, they must abstain from any measure prejudicial to the execution of the agreement that may be proposed by the Commission and, in general, from any act capable of aggravating or prolonging the controversy.

ARTICLE XIV

During the conciliation procedure the members of the Commission shall receive honoraria the amount of which shall be established by common agreement by the parties to the controversy. Each of them shall bear its own expenses, and a moiety of the joint expenses or honoraria.

ARTICLE XV

The present treaty shall be ratified by the High Contracting Parties as soon as possible, in accordance with their respective constitutional procedures.

The original treaty and the instruments of ratification shall be deposited in the Ministry of Foreign Relations and Worship of the Argentine Republic, which shall communicate the ratifications to the other signatory states. The treaty shall go into effect between the High Contracting Parties 30 days after the deposit of the respective ratifications, and in the order in which they are effected.

ARTICLE XVI

This treaty shall remain open to the adherence of all states.

Adherence shall be effected by the deposit of the respective instrument in the Ministry of Foreign Relations and Worship of the Argentine Republic, which shall give notice thereof to the other interested states.

ARTICLE XVII

The present treaty is concluded for an indefinite time, but may be denounced by one year's notice, on the expiration of which the effects thereof shall cease for the denouncing state, and remain in force for the other states which are parties thereto, by signature or adherence.

The denunciation shall be addressed to the Ministry of Foreign Relations and Worship of the Argentine Republic, which shall transmit it to the other interested states.

In witness whereof, the respective plenipotentiaries sign the present treaty in one copy, in the Spanish and Portuguese languages, and affix their seals thereto at Rio de Janeiro, D. F., on the tenth day of the month of October one thousand nine hundred thirty-three.

[Here follow the signatures of the plenipotentiaries of Argentina, Brazil, Chile (with reservations), Mexico, Paraguay, and Uruguay.]

V

Additional Protocol to the General Convention of Inter-American Conciliation

(49 Stat. 3188)

The High Contracting Parties of the General Convention of Inter-American Conciliation of the 5th of January, 1929, convinced of the undeniable advantage of giving a permanent character to the Commissions of Investigation and Conciliation to which Article II of said Convention refers, agree to add to the aforementioned Convention the following and additional Protocol.

ARTICLE I

Each country signatory to the Treaty signed in Santiago, Chile, the 3rd of May, 1923, shall name, as soon as possible, by means of a bilateral agreement which shall be recorded in a simple exchange of notes with each one of the other signatories of the aforementioned Treaty, those members of the various commissions provided for in Article IV of said Treaty. The commissions so named shall have a permanent character and shall be called Commissions of Investigation and Conciliation.

ARTICLE II

Any of the contracting parties may replace the members which have been designated, whether they be nationals or foreigners; but, at the same time, the substitute shall be named. In case the substitution is not made, the replacement shall not be effective.

ARTICLE III

The commissions organized in fulfillment of Article III of the aforementioned Treaty of Santiago, Chile, shall be called Permanent Diplomatic Commissions of Investigation and Conciliation.

ARTICLE IV

To secure the immediate organization of the commissions mentioned in the first Article hereof, the High Contracting Parties engage themselves to notify the Pan American Union at the time of the deposit of the ratification of the present Additional Protocol in the Ministry of Foreign Relations of the Republic of Chile, the names of the two members whose designation they are empowered to make by Article IV of the Convention of Santiago, Chile, and said members, so named, shall constitute the members of the Commissions which are to be organized with bilateral character in accordance with this Protocol.

ARTICLE V

It shall be left to the Governing Board of the Pan American Union to initiate measures for bringing about the nomination of the fifth member of each Commission of Investigation and Conciliation in accordance with the stipulation established in Article IV of the Convention of Santiago, Chile.

ARTICLE VI

In view of the character which this Protocol has as an addition to the Convention of Conciliation of Washington, of January 5, 1929, the provision of Article XVI of said Convention shall be applied thereto.

In witness whereof, the Plenipotentiaries hereinafter indicated, have set their hands and their seals to this Additional Protocol in English, and Spanish, in the city of Montevideo, Republic of Uruguay, this twenty-sixth day of the month of December in the year nineteen hundred and thirty-three.

VI

Convention for the Maintenance, Preservation, and Reestablishment of Peace

(U. S. Treaty Series, No. 922)

The Governments represented at the Inter-American Conference for the Maintenance of Peace, Considering:

That according to the statement of His Excellency Franklin D. Roosevelt, President of the United States, to whose lofty ideals the meeting of this Conference is due, the measures to be adopted by it "would advance the cause of world peace, inasmuch as the agreements which might be reached would supplement and reinforce the efforts of the League of Nations and of all other existing or future peace agencies in seeking to prevent war";

That every war or threat of war affects directly or indirectly all civilized peoples and endangers the great principles of liberty and justice which constitute the American ideal and the standard of American international policy;

That the Treaty of Paris of 1928 (Kellogg-Briand Pact) has been accepted by almost all the civilized states, whether or not members of other peace organizations, and that the Treaty of Non-Aggression and Conciliation of 1933 (Saavedra Lamas Pact signed at Rio de Janeiro) has the approval of the twenty-one American Republics represented in this Conference.

Have resolved to give contractual form to these purposes by concluding the present Convention, to which end they have appointed the Plenipotentiaries hereafter mentioned:

[Here follow the names of the Plenipotentiaries.]

Who, after having deposited their full powers, found to be in good and due form, have agreed as follows:

ARTICLE I

In the event that the peace of the American Republics is menaced, and in order to coordinate efforts to prevent war, any of the Governments of the American Republics signatory to the Treaty of Paris of 1928 or to the Treaty of Non-Aggression and Conciliation of 1933, or to both, whether or not a member of other peace organizations shall consult with the other Governments of the American Republics which, in such event, shall consult together for the purpose of finding and adopting methods of peaceful cooperation.

ARTICLE II

In the event of war, or a virtual state of war between American States, the Governments of the American Republics represented at this Conference shall undertake without delay the necessary mutual consultations, in order to exchange views and to seek, within the obligations resulting from the pacts above mentioned and from the standards of international morality, a method of peaceful collaboration; and, in the event of an international war outside America which might menace the peace of the American Republics, such consultation shall also take place to determine the proper time and manner in which the signatory States, if they so desire, may eventually cooperate in some action tending to preserve the peace of the American Continent.

ARTICLE III

It is agreed that any question regarding the interpretation of the present Convention, which it has not been possible to settle through diplomatic channels, shall be submitted to the procedure of conciliation provided by existing agreements, or to arbitration or to judicial settlement.

ARTICLE IV

The present Convention shall be ratified by the High Contracting Parties in conformity with their respective constitutional procedures. The original convention shall be deposited in the Ministry of Foreign Affairs of the Argentine Republic, which shall communicate the ratifications to the other signatories. The Convention shall come into effect between the High Contracting Parties in the order in which they have deposited their ratifications.

ARTICLE V

The present Convention shall remain in effect indefinitely, but may be denounced by means of one year's notice, after the expiration of which period the Convention shall cease in its effects as regards the party which denounces it but shall remain in effect for the remaining signatory States. Denunciations shall be addressed to the Government of the Argentine Republic, which shall transmit them to the other contracting States.

In witness whereof, the above mentioned Plenipotentiaries sign the present Convention in English, Spanish, Portuguese, and French and hereunto affix their respective seals, at the City of Buenos Aires, Capital of the Argentine Republic, on the twenty-third day of the month of December, nineteen hundred and thirty-six.

Reservation of Paraguay

With the express and definite reservation in respect to its peculiar international position as regards the League of Nations.

VII

Convention to Coordinate, Extend, and Assure the Fulfillment of the Existing Treaties Between the American States

(Treaty Series, No. 926)

The Governments represented at the Inter-American Conference for the Maintenance of Peace,

Animated by a desire to promote the maintenance of general peace in their mutual relations;

Appreciating the advantages derived and to be derived from the various agreements already entered into condemning war and providing methods for the pacific settlement of international disputes;

Recognizing the need for placing the greatest restrictions upon resort to war; and

Believing that for this purpose it is desirable to conclude a new convention to coordinate, extend, and assure the fulfillment of existing agreements, have appointed Plenipotentiaries as follows:

[Here follow the names of the Plenipotentiaries.]

Who, after having deposited their full powers, found to be in good and due form, have agreed upon the following provisions:

ARTICLE I

Taking into consideration that, by the Treaty to Avoid and Prevent Conflicts between the American States, signed at Santiago, May 3, 1923 (known as the Gondra Treaty), the High Contracting Parties agree that all controversies which it has been impossible to settle through diplomatic channels or to submit to arbitration in accordance with existing treaties shall be submitted for investigation and report to a Commission of Inquiry;

That by the Treaty for the Renunciation of War, signed at Paris on August 28, 1928 (known as the Kellogg-Briand Pact, or Pact of Paris), the High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of interna-

tional controversies and renounce it as an instrument of national policy in their relations with one another;

That by the General Convention of Inter-American Conciliation, signed at Washington, January 5, 1929, the High Contracting Parties agree to submit to the procedure of conciliation all controversies between them, which it may not have been possible to settle through diplomatic channels, and to establish a "Commission of Conciliation" to carry out the obligations assumed in the Convention;

That by the General Treaty of Inter-American Arbitration, signed at Washington, January 5, 1929, the High Contracting Parties bind themselves to submit to arbitration, subject to certain exceptions, all differences between them of an international character, which it has not been possible to adjust by diplomacy and which are juridical in their nature by reason of being susceptible of decision by the application of the principles of law, and, moreover, to create a procedure of arbitration to be followed; and

That by the Treaty of Non-Aggression and Conciliation, signed at Rio de Janeiro, October 10, 1933 (known as the Saavedra Lamas Treaty), the High Contracting Parties solemnly declare that they condemn wars of aggression in their mutual relations or in those with other States and that the settlement of disputes or controversies between them shall be effected only by pacific means which have the sanction of international law, and also declare that as between them territorial questions must not be settled by violence, and that they will not recognize any territorial arrangement not obtained by pacific means, nor the validity of the occupation or acquisition of territories brought about by force of arms, and, moreover, in a case of non-compliance with these obligations, the contracting States undertake to adopt, in their character as neutrals, a common and solidary attitude and to exercise the political, juridical, or economic means authorized by international law, and to bring the influence of public opinion to bear, without, however, resorting to intervention, either diplomatic or armed, subject nevertheless to the attitude that may be incumbent upon them by virtue of their collective treaties; and, furthermore, undertake to create a procedure of conciliation;

The High Contracting Parties reaffirm the obligations entered into to settle, by pacific means, controversies of an international character that may arise between them.

ARTICLE II

The High Contracting Parties, convinced of the necessity for the cooperation and consultation provided for in the Convention for the Maintenance, Preservation, and Reestablishment of Peace signed by them on this same day, agree that in all matters which affect peace on the Continent, such consultation and cooperation shall have as their object to assist, through the tender of friendly good offices and of mediation, the fulfillment by the American Republics of existing obligations for pacific settlement, and to take counsel together, with full recognition of their juridical equality, as sovereign and independent States, and of their general right to individual liberty of action, when an emergency arises which affects their common interest in the maintenance of peace.

ARTICLE III

In case of threat of war, the High Contracting Parties shall apply the provisions contained in Articles I and II of the Convention for the Maintenance, Preservation, and Reestablishment of Peace, above referred to, it being understood that, while such consultation is in progress and for a period of not more than six months, the parties in dispute will not have recourse to hostilities or take any military action whatever.

ARTICLE IV

The High Contracting Parties further agree that, in the event of a dispute between two or more of them, they will seek to settle it in a spirit of mutual regard for their respective rights, having recourse for this purpose to direct diplomatic negotiation or to the alternative procedures of mediation, commissions of inquiry, commissions of conciliation, tribunals of arbitration, and courts of justice, as provided in the treaties to which they may be parties; and they also agree that, should it be impossible to settle the dispute by diplomatic negotiation and should the States in dispute

have recourse to the other procedures provided in the present Article, they will report this fact and the progress of the negotiations to the other signatory States. These provisions do not affect controversies already submitted to a diplomatic or juridical procedure by virtue of special agreements.

ARTICLE V

The High Contracting Parties agree that, in the event that the methods provided by the present Convention or by agreements previously concluded should fail to bring about a pacific settlement of differences that may arise between any two or more of them, and hostilities should break out between two or more of them, they shall be governed by the following stipulations:

(*a*) They shall, in accordance with the terms of the Treaty of Non-Aggression and Conciliation (Saavedra Lamas Treaty) adopt in their character as neutrals a common and solidary attitude; and shall consult immediately with one another, and take cognizance of the outbreak of hostilities in order to determine, either jointly or individually, whether such hostilities shall be regarded as constituting a state of war so as to call into effect the provisions of the present Convention.

(*b*) It is understood that, in regard to the question whether hostilities actually in progress constitute a state of war, each of the High Contracting Parties shall reach a prompt decision. In any event, should hostilities be actually in progress between two or more of the Contracting Parties, or between two or more signatory States not at the time parties to this Convention by reason of failure to ratify it, each Contracting Party shall take notice of the situation and shall adopt such an attitude as would be consistent with other multilateral treaties to which it is a party or in accordance with its municipal legislation. Such action shall not be deemed an unfriendly act on the part of any State affected thereby.

ARTICLE VI

Without prejudice to the universal principles of neutrality provided for in the case of an international war outside of America and without affecting the duties contracted by those

American States members of the League of Nations, the High Contracting Parties reaffirm their loyalty to the principles enunciated in the five agreements referred to in Article I, and they agree that in the case of an outbreak of hostilities or threat of an outbreak of hostilities between two or more of them they shall, through consultation, immediately endeavour to adopt in their character as neutrals a common and solidary attitude, in order to discourage or prevent the spread or prolongation of hostilities.

With this object, and having in mind the diversity of cases and circumstances, they may consider the imposition of prohibitions or restrictions on the sale or shipment of arms, munitions, and implements of war, loans or other financial help to the States in conflict, in accordance with the municipal legislation of the High Contracting Parties, and without detriment to their obligations derived from other treaties to which they are or may become parties.

ARTICLE VII

Nothing contained in the present Convention shall be understood as affecting the rights and duties of the High Contracting Parties which are at the same time members of the League of Nations.

ARTICLE VIII

The present Convention shall be ratified by the High Contracting Parties in accordance with their constitutional procedures. The original Convention and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Argentine Republic, which shall communicate the ratifications to the other signatory States. It shall come into effect when ratifications have been deposited by not less than eleven of the signatory States.

The Convention shall remain in force indefinitely, but it may be denounced by any of the High Contracting Parties, such denunciation to be effective one year after the date upon which such notification has been given. Notice of denunciation shall be communicated to the Ministry of Foreign Affairs of the Argentine Republic, which shall transmit copies

thereof to the other signatory States. Denunciation shall not be regarded as valid if the Party making such denunciation shall be actually in a state of war, or shall be engaged in hostilities without fulfilling the provisions established by this Convention.

In witness whereof, the Plenipotentiaries above mentioned have signed this Treaty in English, Spanish, Portuguese, and French and have affixed thereto their respective seals, in the City of Buenos Aires, Capital of the Argentine Republic, this twenty-third day of December, of the year 1936.

RESERVATIONS

Reservation of the Argentine Delegation

In no case, under Article VI, can foodstuffs or raw materials destined for the civil populations of belligerent countries be considered as contraband of war, nor shall there exist any duty to prohibit credits for the acquisition of said foodstuffs or raw materials which have the destination indicated.

With reference to the embargo on arms, each Nation may reserve freedom of action in the face of a war of aggression.

Reservation of the Delegation of Paraguay

In no case, under Article VI, can foodstuffs or raw materials destined for the civil populations of belligerent countries be considered as contraband of war, nor shall there exist any duty to prohibit credits for the acquisition of said foodstuffs or raw materials which have the destination indicated.

With reference to the embargo on arms, each Nation may reserve freedom of action in the face of a war of aggression.

Reservation of the Delegation of El Salvador

With reservation with respect to the idea of continental solidarity when confronted by foreign aggression.

Reservation of the Delegation of Colombia

In signing this Convention, the Delegation of Colombia understands that the phrase "in their character as neutrals," which appears in Articles V and VI, implies a new concept

of international law which allows a distinction to be drawn between the aggressor and the attacked, and to treat them differently. At the same time, the Delegation of Colombia consider it necessary, in order to assure the full and effective application of this Pact, to set down in writing the following definition of the aggressor:

That State shall be considered as an aggressor which becomes responsible for one or several of the following acts:

(*a*) That its armed forces, to whatever branch they may belong, illegally cross the land, sea or air frontiers of other States. When the violation of the territory of a State has been effected by irresponsible bands organized within or outside of its territory and which have received direct or indirect help from another State, such violation shall be considered equivalent, for the purposes of the present Article, to that effected by the regular forces of the State responsible for the aggression;

(*b*) That it has intervened in a unilateral or illegal way in the internal or external affairs of another State;

(*c*) That it has refused to fulfill a legally given arbitral decision or sentence of international justice.

No consideration of any kind, whether political, military, economic or of any other kind, may serve as an excuse or justification for the aggression here anticipated.

VIII

Additional Protocol Relative to Non-Intervention

(U. S. Treaty Series, No. 923)

The Governments represented at the Inter-American Conference for the Maintenance of Peace,

Desiring to assure the benefits of peace in their mutual relations and in their relations with all the nations of the earth, and to abolish the practice of intervention; and

Taking into account that the Convention on Rights and Duties of States, signed at the Seventh International Conference of American States, December 26, 1933, solemnly

affirmed the fundamental principle that "no State has the right to intervene in the internal or external affairs of another."

Have resolved to reaffirm this principle through the negotiation of the following Additional Protocol, and to that end they have appointed the Plenipotentiaries hereafter mentioned.

[Here follow the names of the Plenipotentiaries.]

Who, after having deposited their full powers, found to be in good and due form, have agreed as follows:

ARTICLE I

The High Contracting Parties declare inadmissible the intervention of any one of them, directly or indirectly, and for whatever reason, in the internal or external affairs of any other of the Parties.

The violation of the provisions of this Article shall give rise to mutual consultation, with the object of exchanging views and seeking methods of peaceful adjustment.

ARTICLE II

It is agreed that every question concerning the interpretation of the present Additional Protocol, which it has not been possible to settle through diplomatic channels, shall be submitted to the procedure of conciliation provided for in the agreements in force, or to arbitration, or to judicial settlement.

ARTICLE III

The present Additional Protocol shall be ratified by the High Contracting Parties in conformity with their respective constitutional procedures. The original instrument and the instruments of ratification shall be deposited in the Ministry of Foreign Affairs of the Argentine Republic, which shall communicate the ratifications to the other signatories. The Additional Protocol shall come into effect between the High Contracting Parties in the order in which they shall have deposited their ratifications.

ARTICLE IV

The present Additional Protocol shall remain in effect indefinitely, but may be denounced by means of one year's notice, after the expiration of which period the Protocol shall cease in its effects as regards the party which denounces it but shall remain in effect for the remaining signatory States. Denunciations shall be addressed to the Government of the Argentine Republic, which shall notify them to the other contracting States.

In witness whereof, the above mentioned Plenipotentiaries sign the present Additional Protocol in English, Spanish, Portugese, and French and hereunto affix their respective seals, at the City of Buenos Aires, Capital of the Argentine Republic, on the twenty-third day of the month of December, nineteen hundred and thirty-six.

IX

[Public Resolution—No. 27—75th Congress]

[Chapter 146—1st Session]

[S. J. Res. 51]

JOINT RESOLUTION

To amend the joint resolution entitled "Joint resolution providing for the prohibition of the export of arms, ammunition, and implements of war to belligerent countries; the prohibition of the transportation of arms, ammunition, and implements of war by vessels of the United States for the use of belligerent states; for the registration and licensing of persons engaged in the business of manufacturing, exporting, or importing arms, ammunition, or implements of war; and restricting travel by American citizens on belligerent ships during war," approved August 31, 1935, as amended.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the joint resolution entitled "Joint resolution providing for the prohibition of the export of arms, ammunition, and implements of war to belligerent countries; the prohibition of

the transportation of arms, ammunition, and implements of war by vessels of the United States for the use of belligerent states; for the registration and licensing of persons engaged in the business of manufacturing, exporting, or importing arms, ammunition, or implements of war; and restricting travel by American citizens on belligerent ships during war," approved August 31, 1935, as amended, is amended to read as follows:

"EXPORT OF ARMS, AMMUNITION, AND IMPLEMENTS OF WAR

"SECTION 1. (a) Whenever the President shall find that there exists a state of war between, or among two or more foreign states, the President shall proclaim such fact, and it shall thereafter be unlawful to export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from any place in the United States to any belligerent state named in such proclamation, or to any neutral state for transshipment to, or for the use of, any such belligerent state.

"(b) The President shall, from time to time, by proclamation, extend such embargo upon the export of arms, ammunition, or implements of war to other states as and when they may become involved in such war.

"(c) Whenever the President shall find that a state of civil strife exists in a foreign state and that such civil strife is of a magnitude or is being conducted under such conditions that the export of arms, ammunition, or implements of war from the United States to such foreign state would threaten or endanger the peace of the United States, the President shall proclaim such fact, and it shall thereafter be unlawful to export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from any place in the United States to such foreign state, or to any neutral state for transshipment to, or for the use of, such foreign state.

"(d) The President shall, from time to time by proclamation, definitely enumerate the arms, ammunition, and implements of war, the export of which is prohibited by this section. The arms, ammunition, and implements of war so enumerated shall include those enumerated in the Presi-

dent's proclamation Numbered 2163, of April 10, 1936, but shall not include raw materials or any other articles or materials not of the same general character as those enumerated in the said proclamation, and in the Convention for the Supervision of the International Trade in Arms and Ammunition and in Implements of War, signed at Geneva June 17, 1925.

"(e) Whoever, in violation of any of the provisions of this Act, shall export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from the United States shall be fined not more than $10,000, or imprisoned not more than five years, or both, and the property, vessel, or vehicle containing the same shall be subject to the provisions of sections 1 to 8, inclusive, title 6, chapter 30, of the Act approved June 15, 1917 (40 Stat. 223–225; U. S. C., 1934 ed., title 22, secs. 238–245).

"(f) In the case of the forfeiture of any arms, ammunition, or implements of war by reason of a violation of this Act, no public or private sale shall be required; but such arms, ammunition, or implements of war shall be delivered to the Secretary of War for such use or disposal thereof as shall be approved by the President of the United States.

"(g) Whenever, in the judgment of the President, the conditions which have caused him to issue any proclamation under the authority of this section have ceased to exist, he shall revoke the same, and the provisions of this section shall thereupon cease to apply with respect to the state or states named in such proclamation, except with respect to offenses committed, or forfeitures incurred, prior to such revocation.

"EXPORT OF OTHER ARTICLES AND MATERIALS

"SEC. 2. (a) Whenever the President shall have issued a proclamation under the authority of section 1 of this Act and he shall thereafter find that the placing of restrictions on the shipment of certain articles or materials in addition to arms, ammunition, and implements of war from the United States to belligerent states, or to a state wherein civil strife exists, is necessary to promote the security or preserve the peace of the United States or to protect the

lives of citizens of the United States, he shall so proclaim, and it shall thereafter be unlawful, except under such limitations and exceptions as the President may prescribe as to lakes, rivers, and inland waters bordering on the United States, and as to transportation on or over lands bordering on the United States, for any American vessel to carry such articles or materials to any belligerent state, or to any state wherein civil strife exists, named in such proclamation issued under the authority of section 1 of this Act, or to any neutral state for transshipment to, or for the use of, any such belligerent state or any such state wherein civil strife exists. The President shall by proclamation from time to time definitely enumerate the articles and materials which it shall be unlawful for American vessels to so transport.

"(b) Whenever the President shall have issued a proclamation under the authority of section 1 of this Act and he shall thereafter find that the placing of restrictions on the export of articles or materials from the United States to belligerent states, or to a state wherein civil strife exists, is necessary to promote the security or preserve the peace of the United States or to protect the lives or commerce of citizens of the United States, he shall so proclaim, and it shall thereafter be unlawful, except under such limitations and exceptions as the President may prescribe as to lakes, rivers, and inland waters bordering on the United States, and as to transportation on or over land bordering on the United States, to export or transport, or attempt to export or transport, or cause to be exported or transported, from the United States to any belligerent state, or to any state wherein civil strife exists, named in such proclamation issued under the authority of section 1 of this Act, or to any neutral state for transshipment to, or for the use of, any such belligerent state or any such state wherein civil strife exists, any articles or materials whatever until all right, title, and interest therein shall have been transferred to some foreign government, agency, institution, association, partnership, corporation, or national. The shipper of such articles or materials shall be required to file with the collector of the port from which they are to be exported a declaration under oath that there exists in citizens of the United States no right, title, or interest in such articles or materials, and

to comply with such rules and regulations as shall be promulgated from time to time by the President. Any such declaration so filed shall be a conclusive estoppel against any claim of any citizen of the United States of right, title, or interest in such articles or materials. Insurance written by underwriters on any articles or materials the export of which is prohibited by this Act, or on articles or materials carried by an American vessel in violation of subsection (a) of this section, shall not be deemed an American interest therein, and no insurance policy issued on such articles or materials and no loss incurred thereunder or by the owner of the vessel carrying the same shall be made a basis of any claim put forward by the Government of the United States.

"(c) The President shall from time to time by proclamation extend such restrictions as are imposed under the authority of this section to other states as and when they may be declared to become belligerent states under proclamations issued under the authority of section 1 of this Act.

"(d) The President may from time to time change, modify, or revoke in whole or in part any proclamations issued by him under the authority of this section.

"(e) Except with respect to offenses committed, or forfeitures incurred, prior to May 1, 1939, this section and all proclamations issued thereunder shall not be effective after May 1, 1939.

"FINANCIAL TRANSACTIONS

"SEC. 3. (a) Whenever the President shall have issued a proclamation under the authority of section 1 of this Act, it shall thereafter be unlawful for any person within the United States to purchase, sell, or exchange bonds, securities, or other obligations of the government of any belligerent state or of any state wherein civil strife exists, named in such proclamation, or of any political subdivision of any such state, or of any person acting for or on behalf of the government of any such state, or of any faction or asserted government within any such state wherein civil strife exists, or of any person acting for or on behalf of any faction or asserted government within any such state wherein civil strife exists, issued after the date of such proclamation, or to make any loan or extend any credit to any such

government, political subdivision, faction, asserted government, or person, or to solicit or receive any contribution for any such government, political subdivision, faction, asserted government, or person: *Provided*, That if the President shall find that such action will serve to protect the commercial or other interests of the United States or its citizens, he may, in his discretion, and to such extent and under such regulations as he may prescribe, except from the operation of this section ordinary commercial credits and short-time obligations in aid of legal transactions and of a character customarily used in normal peacetime commercial transactions. Nothing in this subsection shall be construed to prohibit the solicitation or collection of funds to be used for medical aid and assistance, or for food and clothing to relieve human suffering, when such solicitation or collection of funds is made on behalf of and for use by any person or organization which is not acting for or on behalf of any such government, political subdivision, faction, or asserted government, but all such solicitations and collections of funds shall be subject to the approval of the President and shall be made under such rules and regulations as he shall prescribe.

"(b) The provisions of this section shall not apply to a renewal or adjustment of such indebtedness as may exist on the date of the President's proclamation.

"(c) Whoever shall violate the provisions of this section or of any regulations issued hereunder shall, upon conviction thereof, be fined not more than $50,000 or imprisoned for not more than five years, or both. Should the violation be by a corporation, organization, or association, each officer or agent thereof participating in the violation may be liable to the penalty herein prescribed.

"(d) Whenever the President shall have revoked any such proclamation issued under the authority of section 1 of this Act, the provisions of this section and of any regulations issued by the President hereunder shall thereupon cease to apply with respect to the state or states named in such proclamation, except with respect to offenses committed prior to such revocation

"EXCEPTIONS—AMERICAN REPUBLICS

"SEC. 4. This Act shall not apply to an American republic or republics engaged in war against a non-American state or states, provided the American republic is not cooperating with a non-American state or states in such war.

"NATIONAL MUNITIONS CONTROL BOARD

"SEC. 5. (a) There is hereby established a National Munitions Control Board (hereinafter referred to as the 'Board') to carry out the provisions of this Act. The Board shall consist of the Secretary of State, who shall be chairman and executive officer of the Board, the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, and the Secretary of Commerce. Except as otherwise provided in this Act, or by other law, the administration of this Act is vested in the Department of State. The Secretary of State shall promulgate such rules and regulations with regard to the enforcement of this section as he may deem necessary to carry out its provisions. The Board shall be convened by the chairman and shall hold at least one meeting a year.

"(b) Every person who engages in the business of manufacturing, exporting, or importing any of the arms, ammunition, or implements of war referred to in this Act, whether as an exporter, importer, manufacturer, or dealer, shall register with the Secretary of State his name, or business name, principal place of business, and places of business in the United States, and a list of the arms, ammunition, and implements of war which he manufactures, imports, or exports.

"(c) Every person required to register under this section shall notify the Secretary of State of any change in the arms, ammunition, or implements of war which he exports, imports, or manufactures; and upon such notification the Secretary of State shall issue to such person an amended certificate of registration, free of charge, which shall remain valid until the date of expiration of the original certificate. Every person required to register under the provisions of this section shall pay a registration fee of $500, unless he

manufactured, exported, or imported arms, ammunition, and implements of war to a total sales value of less than $50,000 during the twelve months immediately preceding his registration, in which case he shall pay a registration fee of $100. Upon receipt of the required registration fee, the Secretary of State shall issue a registration certificate valid for five years, which shall be renewable for further periods of five years upon the payment for each renewal of a fee of $500 in the case of persons who manufactured, exported, or imported arms, ammunition, and implements of war to a total sales value of more than $50,000 during the twelve months immediately preceding the renewal, or a fee of $100 in the case of persons who manufactured, exported, or imported arms, ammunition, and implements of war to a total sales value of less than $50,000 during the twelve months immediately preceding the renewal. The Secretary of the Treasury is hereby directed to refund, out of any moneys in the Treasury not otherwise appropriated, the sum of $400 to every person who shall have paid a registration fee of $500 pursuant to this Act, who manufactured, exported, or imported arms, ammunition, and implements of war to a total sales value of less than $50,000 during the twelve months immediately preceding his registration.

"(d) It shall be unlawful for any person to export, or attempt to export, from the United States to any other state, any of the arms, ammunition, or implements of war referred to in this Act, or to import, or attempt to import, to the United States from any other state, any of the arms, ammunition, or implements of war referred to in this Act, without first having obtained a license therefor.

"(e) All persons required to register under this section shall maintain, subject to the inspection of the Secretary of State, or any person or persons designated by him, such permanent records of manufacture for export, importation, and exportation of arms, ammunition, and implements of was as the Secretary of State shall prescribe.

"(f) Licenses shall be issued to persons who have registered as herein provided for, except in cases of export or import licenses where the export of arms, ammunition, or implements of war would be in violation of this Act or any

other law of the United States, or of a treaty to which the United States is a party, in which cases such licenses shall not be issued.

"(g) Whenever the President shall have issued a proclamation under the authority of section 1 of this Act, all licenses theretofore issued under this Act shall ipso facto and immediately upon the issuance of such proclamation, cease to grant authority to export arms, ammunition, or implements of war from any place in the United States to any belligerent state, or to any state wherein civil strife exists, named in such proclamation, or to any neutral state for transshipment to, or for the use of, any such belligerent state or any such state wherein civil strife exists; and said licenses, insofar as the grant of authority to export to the state or states named in such proclamation is concerned, shall be null and void.

"(h) No purchase of arms, ammunition, or implements of war shall be made on behalf of the United States by any officer, executive department, or independent establishment of the Government from any person who shall have failed to register under the provisions of this Act.

"(i) The provisions of the Act of August 29, 1916, relating to the sale of ordnance and stores to the Government of Cuba (39 Stat. 619, 643; U. S. C., 1934 ed., title 50, sec. 72), are hereby repealed as of December 31, 1937.

"(j) The Board shall make an annual report to Congress, copies of which shall be distributed as are other reports transmitted to Congress. Such reports shall contain such information and data collected by the Board as may be considered of value in the determination of questions connected with the control of trade in arms, ammunition, and implements of war. The Board shall include in such reports a list of all persons required to register under the provisions of this Act, and full information concerning the licenses issued hereunder.

"(k) The President is hereby authorized to proclaim upon recommendation of the Board from time to time a list of articles which shall be considered arms, ammunition, and implements of war for the purposes of this section.

"AMERICAN VESSELS PROHIBITED FROM CARRYING ARMS TO BELLIGERENT STATES

"SEC. 6. (a) Whenever the President shall have issued a proclamation under the authority of section 1 of this Act, it shall thereafter be unlawful, until such proclamation is revoked, for any American vessel to carry any arms, ammunition, or implements of war to any belligerent state, or to any state wherein civil strife exists, named in such proclamation, or to any neutral state for transshipment to, or for the use of, any such belligerent state or any such state wherein civil strife exists.

"(b) Whoever, in violation of the provisions of this section, shall take, or attempt to take, or shall authorize, hire, or solicit another to take, any American vessel carrying such cargo out of port or from the jurisdiction of the United States shall be fined not more than $10,000, or imprisoned not more than five years, or both; and, in addition, such vessel, and her tackle, apparel, furniture, and equipment, and the arms, ammunition, and implements of war on board, shall be forfeited to the United States.

"USE OF AMERICAN PORTS AS BASE OF SUPPLY

"SEC. 7. (a) Whenever, during any war in which the United States is neutral, the President, or any person thereunto authorized by him, shall have cause to believe that any vessel, domestic or foreign, whether requiring clearance or not, is about to carry out of a port of the United States, fuel, men, arms, ammunition, implements of war, or other supplies to any warship, tender, or supply ship of a belligerent state, but the evidence is not deemed sufficient to justify forbidding the departure of the vessel as provided for by section 1, title V, chapter 30, of the Act approved June 15, 1917 (40 Stat. 217, 221; U. S. C., 1934 ed., title 18, sec. 31), and if, in the President's judgment, such action will serve to maintain peace between the United States and foreign states, or to protect the commercial interests of the United States and its citizens, or to promote the security or neutrality of the United States, he shall have the power and it shall be his duty to require the owner,

master, or person in command thereof, before departing from a port of the United States, to give a bond to the United States, with sufficient sureties, in such amount as he shall deem proper, conditioned that the vessel will not deliver the men, or any part of the cargo, to any warship, tender, or supply ship of a belligerent state.

"(b) If the President, or any person thereunto authorized by him, shall find that a vessel, domestic or foreign, in a port of the United States, has previously cleared from a port of the United States during such war and delivered its cargo or any part thereof to a warship, tender, or supply ship of a belligerent state, he may prohibit the departure of such vessel during the duration of the war.

"SUBMARINES AND ARMED MERCHANT VESSELS

"SEC. 8. Whenever, during any war in which the United States is neutral, the President shall find that special restrictions placed on the use of the ports and territorial waters of the United States by the submarines or armed merchant vessels of a foreign state, will serve to maintain peace between the United States and foreign states, or to protect the commercial interests of the United States and its citizens, or to promote the security of the United Sates, and shall make proclamation thereof, it shall thereafter be unlawful for any such submarine or armed merchant vessel to enter a port or the territorial waters of the United States or to depart therefrom, except under such conditions and subject to such limitations as the President may prescribe. Whenever, in his judgment, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke his proclamation and the provisions of this section shall thereupon cease to apply.

"TRAVEL ON VESSELS OF BELLIGERENT STATES

"SEC. 9. Whenever the President shall have issued a proclamation under the authority of section 1 of this Act it shall thereafter be unlawful for any citizen of the United States to travel on any vessel of the state or states named in such proclamation, except in accordance with such rules and regulations as the President shall prescribe: *Provided*, *how-*

ever, That the provisions of this section shall not apply to a citizen of the United States traveling on a vessel whose voyage was begun in advance of the date of the President's proclamation, and who had no opportunity to discontinue his voyage after that date: *And provided further*, That they shall not apply under ninety days after the date of the President's proclamation to a citizen of the United States returning from a foreign state to the United States. Whenever, in the President's judgment, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke his proclamation and the provisions of this section shall thereupon cease to apply with respect to the state or states named in such proclamation, except with respect to offenses committed prior to such revocation.

"ARMING OF AMERICAN MERCHANT VESSELS PROHIBITED

"SEC. 10. Whenever the President shall have issued a proclamation under the authority of section 1, it shall thereafter be unlawful, until such proclamation is revoked, for any American vessel engaged in commerce with any belligerent state, or any state wherein civil strife exists, named in such proclamation, to be armed or to carry any armament, arms, ammunition, or implements of war, except small arms and ammunition therefor which the President may deem necessary and shall publicly designate for the preservation of discipline aboard such vessels.

"REGULATIONS

"SEC. 11. The President may, from time to time, promulgate such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out any of the provisions of this Act; and he may exercise any power or authority conferred on him by this Act through such officer or officers, or agency or agencies, as he shall direct.

"GENERAL PENALTY PROVISIONS

"SEC. 12. In every case of the violation of any of the provisions of this Act or of any rule or regulation issued pursuant thereto where a specific penalty is not herein provided, such violator or violators, upon conviction, shall

be fined not more than $10,000, or imprisoned not more than five years, or both.

"DEFINITIONS

"SEC. 13. For the purposes of this Act—

"(a) The term 'United States,' when used in a geographical sense, includes the several States and Territories, the insular possessions of the United States (including the Philippine Islands), the Canal Zone, and the District of Columbia.

"(b) The term 'person' includes a partnership, company, association, or corporation, as well as a natural person.

"(c) The term 'vessel' means every description of watercraft (including aircraft) or other contrivance used, or capable of being used, as a means of transportation on, under, or over water.

"(d) The term 'American vessel' means any vessel (including aircraft) documented under the laws of the United States.

"(e) The term 'vehicle' means every description of carriage (including aircraft) or other contrivance used, or capable of being used, as a means of transportation on or over land.

"(f) The term 'state' shall include nation, government, and country.

"SEPARABILITY OF PROVISIONS

"SEC. 14. If any of the provisions of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

"APPROPRIATIONS

"SEC. 15. There is hereby authorized to be appropriated from time to time, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the provisions and accomplish the purposes of this Act."

Approved, May 1, 1937, 6:30 p. m., Central Standard Time.

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